

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOHN D. HOWARD, individually and as  
assignee of Jaime Frankfurt LLC,

*Plaintiff,*

-against-

ANN FREEDMAN, GLAFIRA ROSALES,  
KNOEDLER GALLERY, LLC, d/b/a  
KNOEDLER & COMPANY, MICHAEL  
HAMMER, JOSE CARLOS BERGANTINOS  
DIAZ, and JAIME ANDRADE,

*Defendants.*

ECF CASE

12-CV-5263 (PGG) (HBP)

**DECLARATION OF  
RONALD W. ADELMAN**

RONALD W. ADELMAN declares under penalty of perjury:

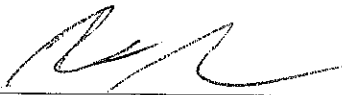
I am counsel at Cahill Partners LLP, attorney for Plaintiff John Howard ("Howard") in the above captioned matter. I make this declaration in connection with Howard's motion, pursuant to Fed. R. Civ. P. 37, to impose sanctions on defendants Michael Hammer and Knoedler Gallery, LLC.

Annexed hereto are true and correct copies of the following:

1. Exhibit A is a letter from Frank Del Deo to Michael Hammer, dated October 20, 2009, produced by Knoedler Gallery with the bates number KG-00002280.
2. Exhibit B consists of the relevant excerpts from the transcript of the Deposition of Frank Del Deo, taken on May 10, 2013.
3. Exhibit C consists of the relevant excerpts from the transcript of the Deposition of Michael Hammer, taken on May 8, 2013.

4. Exhibit D is the Page 1 of the privilege log of Knoedler Gallery, LLC, dated March 22, 2013.
5. Exhibit E is a letter from Ronald W. Adelman to Charles Schmerler, dated September 19, 2012.
6. Exhibit F is an excerpt from the Transcript of a Conference before Judge Paul G. Gardephe, dated December 6, 2012.
7. Exhibit G is a letter from John Cahill to Charles Schmerler et al., dated December 18, 2012.
8. Exhibit H is a letter from Ann Freedman to Jay Shidler, dated March 23, 2006.
9. Exhibit I is a letter from Howard Nagelberg to Michael Hammer, dated December 19, 2011.
10. Exhibit J is a letter from Andrius Kontrimas to Howard Nagelberg, dated January 5, 2012.
11. Exhibit K consists of relevant excerpts from the transcript of the Deposition of Howard Shaw, taken on April 29, 2013.
12. Exhibit L consists of relevant excerpts from the transcript of the Deposition of Ann Freedman, taken on May 6, 2013.

Dated: August 30, 2013  
New York, New York

  
\_\_\_\_\_  
Ronald W. Adelman

# Exhibit A

October 20, 2009

Mr. Michael A. Hammer  
The Armand Hammer Foundation  
9510 Jefferson Boulevard  
Culver City, CA 90232

*via FEDEX*

Dear Michael,

As you requested, I am sending to you herewith an updated list of Knoedler-owned inventory, with columns including **Cost** and **Retail** and **Date Purchased**.

Please note that, with respect to the "Rosales" and "Masaccio" pictures, we have changed their designation, for the time being, to NFS (not for sale).

With all best,

Frank Del Deo  
Director

KG-00002280

# Exhibit B

Page 1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
INDEX NO. 12 CV 5263

-----x  
JOHN D. HOWARD, individually and as assignee of  
Jaime Frankfurt, LLC,

Plaintiff,

vs.

ANN FREEDMAN, GLAFIRA ROSALES, KNOEDLER  
GALLERY, LLC, d/b/a KNOEDLER & COMPANY, MICHAEL  
HAMMER, 8-31 HOLDINGS, INC., JOSE CARLOS  
BERGANTINOS DIAZ, and JAIME R. ANDRADE,  
Defendants.

-----x  
INDEX NO. 12 Civ 2313  
DOMENICO DE SOLE and ELEANORE DE SOLE,  
individually and as assignees of LAURA DE SOLE,

Plaintiffs,

vs.

KNOEDLER GALLERY, LLC D/B/A KNOEDLER & COMPANY,  
ANN FREEDMAN, GLAFIRA ROSALES, JOSE CARLOS  
BERGANTINOS DIAZ, MICHAEL HAMMER, and JAIME  
ANDRADE,

Defendants.

-----x  
DEPOSITION OF FRANK DEL DEO  
Friday, May 10, 2013

HUDSON REPORTING & VIDEO 1-800-310-1769

Page 3

1 A P P E A R A N C E S:

2  
3 CAHILL PARTNERS, LLP  
4 58 West 40th Street, 2nd Floor  
5 New York, New York 10018  
6 212-719-4400

7 BY: JOHN R. CAHILL, ESQ.  
8 Attorneys for the Plaintiff

9  
10 FULBRIGHT & JAWORSKI LLP  
11 666 Fifth Avenue  
12 New York, New York 10103  
13 212-318-3326

14 BY: INDIA DECARMINE, ESQ.  
15 Attorneys for the Defendants Knoedler Gallery,  
16 Michael Hammer, 8-31 Holdings, Inc.

17  
18 OUTTEN & GOLDEN LLP  
19 3 Park Avenue  
20 New York, New York 10016  
21 212-245-1000

22 BY: LEWIS M. STEEL, ESQ.  
23 Attorneys for the witness, Frank Del Deo  
24  
25

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1 Deposition of FRANK DEL DEO taken in the  
2 above-entitled matter before Mark Iuzzolino, a  
3 Certified Shorthand Reporter (License No. X101103),  
4 taken at the offices of CAHILL PARTNERS, LLP, 58  
5 West 40th Street, 2nd Floor, New York, New York, on  
6 Friday, May 10, 2013, commencing at  
7 10:07 a.m.  
8  
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18  
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22  
23  
24  
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Page 4

1 A P P E A R A N C E S: (CONT.)

2  
3  
4 BOIES, SCHILLER & FLEXNER, LLP  
5 10 North Pearl Street  
6 Albany, New York 12207  
7 518-694-4222  
8 BY: PAUL B. MASLO, ESQ.  
9 Attorneys for the Defendant Ann Friedman  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
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21  
22  
23  
24  
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1 to answer, which he may do, in which case you  
2 should listen to him, I'd appreciate it if  
3 you'd answer the question. And do so verbally  
4 because the court reporter needs to get  
5 something on the record. We're not taking a  
6 video today, so he needs to hear it and -- you  
7 know, that will be helpful.

8 This is not an endurance contest.  
9 You may find it tiring to answer questions.  
10 And if at any point you want to take a break,  
11 feel free to say, "I'd like to take a break."  
12 The only thing I'd ask is that you do that  
13 after you answer a question, not during a  
14 question. The exception, which your attorney  
15 will tell you, if you have some question about  
16 something privileged or something like that,  
17 then we'll do that.

18 Have you taken any medication, or is  
19 there anything else we should know that would  
20 keep you from testifying accurately and  
21 honestly today?

22 A. No, sir.

23 Q. Did you -- have you ever been deposed  
24 before?

25 A. No, sir.

Page 6

1 FRANK DEL DEO  
2 Having been first duly sworn, was examined and  
3 testified as follows:  
4

5 EXAMINATION  
6 BY MR. CAHILL:

7 Q. Good morning, Mr. Del Deo. My name  
8 is John Cahill, and I'm an attorney with the  
9 firm of Cahill Partners, LLP, which represents  
10 a gentleman named John Howard. And Mr. Howard  
11 has filed a lawsuit against Ann Freedman,  
12 Knoedler Gallery, and a number of other folks.  
13 And I'm going to be asking you some questions  
14 in connection with that lawsuit that will also  
15 be usable in a case that's entitled De Sole  
16 versus Knoedler and Freedman and some other  
17 people.

18 When I ask you the questions, of  
19 course, I'm going to be looking for answers.  
20 You may hear an objection from your counsel or  
21 from the other counsel. It can be  
22 disconcerting. And what they're trying to do  
23 is tell me that there's something maybe wrong  
24 with the question or something else. Unless  
25 your attorney asks you to -- instructs you not

Page 8

1 Q. Have you testified before?  
2 A. Yes.  
3 Q. And when was that?  
4 A. In December of 2011.  
5 Q. We may have seen each other there.  
6 Was that in the Lagrange hearing?  
7 A. That's correct.  
8 Q. Before your deposition today -- and  
9 don't tell me what you said -- did you spend  
10 any time speaking with your attorney?  
11 A. Yes.  
12 Q. Did you spend any time speaking with  
13 attorneys for any of the other parties in the  
14 Howard case or the De Sole case?  
15 A. No.  
16 Q. Is anyone paying the legal fees of  
17 your attorney?  
18 MR. STEEL: Objection. I instruct  
19 him not to answer. You're asking him an  
20 attorney/client privileged matter.  
21 MR. CAHILL: I don't think that's  
22 privileged, but, of course, you know,  
23 you're entitled to give your instruction.  
24 Would it make a difference to you if I  
25 phrase the question this way: Are any of

Page 9

1 the parties in the Howard/De Sole case  
 2 paying for your attorney?  
 3 MR. STEEL: Same objection.  
 4 MR. CAHILL: I do think there's law  
 5 to the contrary, but, again, I'm not going  
 6 to spend the time to do it now. We may  
 7 have to come back to that. I reserve the  
 8 right for that.  
 9 BY MR. CAHILL:  
 10 Q. I can't remember if I asked you --  
 11 and if I did, I apologize -- whether you spent  
 12 any time with the attorneys for any of the  
 13 other parties in this case.  
 14 A. You did ask me.  
 15 Q. Yes. And you said no?  
 16 A. I did.  
 17 Q. I apologize for that.  
 18 Did you ever work for a gallery, an  
 19 art gallery during your career?  
 20 A. Yes.  
 21 Q. And have you worked for more than one  
 22 art gallery?  
 23 A. I have.  
 24 Q. What art galleries have you worked  
 25 for?

Page 10

1 A. I worked for Knoedler & Company, I  
 2 have worked for Hirschl & Adler Modern, and I  
 3 have worked for Barbara Mathes Gallery, and I  
 4 have worked for Lee Witkin, Witkin Gallery.  
 5 Q. And when did you begin working at the  
 6 Knoedler Gallery?  
 7 A. In November of 1999.  
 8 Q. When did you stop working at the  
 9 Knoedler Gallery?  
 10 A. In November of 2011.  
 11 Q. Do you remember the date in 2011 that  
 12 you stopped working at the Knoedler Gallery?  
 13 A. It was late in the month, but, no.  
 14 Q. At the time that you began at the  
 15 Knoedler Gallery, what was your position?  
 16 A. I was the associate director.  
 17 Q. At the time you finished, what was --  
 18 at the time you stopped working at the Knoedler  
 19 Gallery, what was your position?  
 20 A. I was the president and director.  
 21 Q. In what year did you become the  
 22 president and director?  
 23 A. In 2009.  
 24 Q. Do you remember the month?  
 25 A. I believe it was September or

Page 11

1 October.  
 2 Q. Did anyone occupy the role of  
 3 president before you became president of  
 4 Knoedler?  
 5 A. Yes.  
 6 Q. And who was that?  
 7 A. Ann Freedman.  
 8 Q. Did anyone occupy the role of  
 9 director before you became director?  
 10 A. Yes.  
 11 Q. And who was that?  
 12 A. That was Ann Freedman.  
 13 Q. And was 2008 the last full year in  
 14 which Ann Freedman was the president and  
 15 director?  
 16 A. That would be correct.  
 17 Q. Do you know what Ann Freedman's  
 18 compensation was in 2008?  
 19 A. I do not.  
 20 Q. Do you have any idea?  
 21 MR. STEEL: Objection.  
 22 MS. DeCARMINE: Objection.  
 23 MR. MASLO: Objection.  
 24 BY MR. CAHILL:  
 25 Q. Do you know if Ms. Freedman made more

Page 12

1 than a million dollars in 2008?  
 2 A. I do not know.  
 3 Q. In your last year -- was your last  
 4 full year of working at Knoedler 2010?  
 5 A. Yes.  
 6 Q. What was your compensation from  
 7 Knoedler in 2010?  
 8 A. My base salary was \$240,000.  
 9 Q. Did you receive a bonus in 2010?  
 10 A. 240 or 250. No, I did not.  
 11 Q. Did you have any bonus -- did you  
 12 have any agreement with Knoedler about bonus  
 13 compensation?  
 14 A. Not at that time.  
 15 Q. Had you ever, when working with  
 16 Knoedler, have any agreement concerning bonus  
 17 comp?  
 18 A. No.  
 19 Q. Did you ever have any profit share?  
 20 A. No.  
 21 Q. Do you know if Ms. Freedman had any  
 22 profit share?  
 23 A. It was my understanding that she did.  
 24 Q. Do you know what Ms. Freedman's  
 25 profit share was?



Page 13

1 A. I do not.  
 2 Q. In 2010 did you believe that your  
 3 compensation at Knoedler was consistent with  
 4 the market for art gallery directors in 2010?  
 5 MR. STEEL: Objection.  
 6 MS. DeCARMINE: Objection.  
 7 MR. STEEL: You may answer. My  
 8 objection is noted on the record.  
 9 A. Okay. Could I ask you to repeat the  
 10 question?  
 11 Q. Sure. In 2010 do you believe that  
 12 your compensation was consistent for the -- was  
 13 consistent with the market for art gallery  
 14 directors in 2010?  
 15 A. My compensation?  
 16 Q. Yes.  
 17 A. Yes, more or less.  
 18 Q. Did you feel underpaid?  
 19 A. Maybe somewhat.  
 20 Q. Can you give me some sense of the  
 21 magnitude by which you felt underpaid?  
 22 A. Maybe 20 percent of, you know, what  
 23 my base salary was, to that magnitude.  
 24 Q. Did your duties in 2010 as president  
 25 and director differ in any way from

Page 14

1 Ms. Freedman's duties in 2008 as president and  
 2 director?  
 3 MR. STEEL: Objection.  
 4 MS. DeCARMINE: Objection.  
 5 MR. MASLO: Objection.  
 6 A. Am I to answer the question?  
 7 Q. Yes, if there's an objection, unless  
 8 you hear an instruction not to answer.  
 9 A. Well, my duties -- I'm sorry. Would  
 10 you --  
 11 Q. Did your duties in 2010 as president  
 12 and director of Knoedler differ in any way from  
 13 Ms. Freedman's duties as president and director  
 14 of Knoedler?  
 15 MR. STEEL: Again, our objections are  
 16 noted on the record.  
 17 A. I don't really know.  
 18 Q. You don't know? All right.  
 19 Who was your employer when you joined  
 20 the Knoedler Gallery in November of 1999?  
 21 A. Knoedler & Company was my employer.  
 22 Q. And did there come a time when that  
 23 changed?  
 24 A. Not to my knowledge.  
 25 Q. When you -- did you receive a salary

Page 15

1 in 1999 when you joined Knoedler?  
 2 A. I did.  
 3 Q. And who paid that salary?  
 4 A. The company.  
 5 Q. Do you know what the name of the  
 6 company was?  
 7 A. It was either the gallery's name or  
 8 another entity. I don't recall.  
 9 Q. Were you ever paid by a company  
 10 called "8-31 Holdings"?  
 11 A. Yes.  
 12 Q. And when did that begin?  
 13 A. I don't recall.  
 14 Q. Did you ever do any work for  
 15 8-31 Holdings?  
 16 A. I don't know what you mean by that.  
 17 Q. Well, did you -- do you ever perform  
 18 any services as an employee for 8-31 Holdings?  
 19 MR. STEEL: Objection.  
 20 A. If 8-31 Holdings was paying me, then  
 21 I was presumably working for them.  
 22 Q. Do you know what the business of  
 23 8-31 --  
 24 MS. DeCARMINE: I'm going to move to  
 25 strike that answer as nonresponsive.

Page 16

1 Q. Do you know what the business of  
 2 8-31 Holdings was, if any?  
 3 A. It was the company that owned the  
 4 gallery as well as another gallery.  
 5 Q. And what was the other gallery?  
 6 A. Hammer Galleries.  
 7 Q. Do you recall anything that you did  
 8 for 8-31 Holdings as distinct from the gallery?  
 9 A. No.  
 10 Q. Were you fired from Knoedler?  
 11 A. No.  
 12 Q. Did you resign from Knoedler?  
 13 A. I did.  
 14 Q. And why did you resign?  
 15 A. The gallery was facing eminent  
 16 closure, and I wanted to get on with my life.  
 17 Q. When did you come to believe that the  
 18 gallery was facing eminent closure?  
 19 A. When I was told by the gallery's  
 20 attorney.  
 21 MS. DeCARMINE: I'm going to caution  
 22 that you not go any further with his  
 23 conversations with the gallery's  
 24 attorneys.  
 25 Q. When did the gallery's attorney tell

Page 17

1 you that the gallery was closing?  
 2 MS. DeCARMINE: Again, I'm going to  
 3 instruct him not to answer.  
 4 MR. CAHILL: Again, I don't think  
 5 that's privileged, but I can't -- I can't  
 6 stop. We'll just mark that for the  
 7 record. It won't go on.  
 8 BY MR. CAHILL:  
 9 Q. Who was the gallery's attorney at the  
 10 time you resigned from the gallery?  
 11 A. Mr. Andrius Kontrimas.  
 12 Q. Had you ever met Mr. Kontrimas at the  
 13 time that you resigned from the gallery?  
 14 A. No.  
 15 Q. How long between the time that you  
 16 learned that the gallery was facing imminent  
 17 closure -- let me withdraw that.  
 18 How much time passed between the time  
 19 you learned that the gallery was facing  
 20 imminent closure and your resignation?  
 21 MS. DeCARMINE: Objection.  
 22 A. It was a matter of days.  
 23 Q. Do you know how many days?  
 24 A. No.  
 25 Q. Did you discuss your resignation with

Page 19

1 of -- I had no intention of staying on during  
 2 that time and that I was resigning.  
 3 Q. Do you recall anything Mr. Barzune  
 4 said?  
 5 A. That he, too, was going to resign.  
 6 Q. Did you tell Mr. Barzune why the  
 7 gallery was going to close abruptly?  
 8 MR. MASLO: Objection.  
 9 MS. DeCARMINE: Object to the form.  
 10 A. That it was a decision that ...  
 11 MS. DeCARMINE: To the extent that  
 12 any of it is what was communicated to you  
 13 by Knoedler's counsel, I instruct you not  
 14 to answer.  
 15 THE WITNESS: Okay.  
 16 BY MR. CAHILL:  
 17 Q. What did you tell -- did you tell  
 18 Mr. Barzune anything about why the gallery was  
 19 closing?  
 20 MR. STEEL: Again, the instruction is  
 21 that, if you got the information from  
 22 counsel, that's privileged.  
 23 THE WITNESS: And that information  
 24 did come from counsel.  
 25 MR. CAHILL: So you're instructing

Page 18

1 anyone at Knoedler other than an attorney?  
 2 A. Yes.  
 3 Q. With whom did you discuss your  
 4 resignation at Knoedler other than an attorney?  
 5 A. My associate director, Benjamin  
 6 Barzune.  
 7 Q. When did you have a discussion with  
 8 Mr. Barzune about your resignation?  
 9 A. Several days before I submitted my  
 10 resignation.  
 11 Q. Where did that discussion take place?  
 12 A. I don't recall.  
 13 Q. And what was the substance of your  
 14 conversation with Mr. Barzune before your  
 15 resignation?  
 16 What was your discussion -- I think  
 17 you testified you had a discussion with  
 18 Mr. Barzune about your resignation several days  
 19 before you resigned.  
 20 A. Yes.  
 21 Q. My question is: What was the  
 22 substance of the discussion with Mr. Barzune  
 23 about that?  
 24 A. That there was plans to close the  
 25 gallery abruptly and that we had no intention

Page 20

1 the witness not to answer a conversation  
 2 that he had with an employee at Knoedler  
 3 Gallery?  
 4 MS. DeCARMINE: Yes, about a  
 5 conversation that he had with an attorney  
 6 at Knoedler Gallery, yes.  
 7 BY MR. CAHILL:  
 8 Q. I'm not asking you to tell me any --  
 9 did you -- I'm not asking you to tell me  
 10 anything about your conversation with the  
 11 attorney. I'm asking you to tell me what you  
 12 told Mr. Barzune.  
 13 MS. DeCARMINE: I'm repeating the  
 14 instruction. What he told Mr. Barzune  
 15 is -- was learned from the attorney and  
 16 was in the context of his privileged  
 17 conversation with the attorney. And  
 18 Mr. Barzune is also still employed by  
 19 Knoedler. I am instructing him not to  
 20 answer that.  
 21 BY MR. CAHILL:  
 22 Q. Did you tell Mr. Barzune anything  
 23 about your conversation with Mr. Kontrimas?  
 24 A. Yes.  
 25 Q. When you say that the gallery planned

Page 21

1 to close abruptly, what did you mean by the  
 2 word "abruptly"?  
 3 A. Prematurely, before it was scheduled  
 4 to cease operation.  
 5 Q. And were there plans at the time that  
 6 you learned that the gallery was to close that  
 7 the gallery was to cease operations at a later  
 8 date?  
 9 A. It's my understanding that we were  
 10 ceasing operations at a later date.  
 11 Q. What date did you understand that the  
 12 gallery in --  
 13 A. February of '12, or January.  
 14 Q. And when did you learn that the  
 15 gallery would cease operations in February of  
 16 2012?  
 17 MS. DeCARMINE: Again, I will caution  
 18 you. If it's in the context of an  
 19 attorney/client communication, I will  
 20 caution you not to answer.  
 21 Q. I'm not asking you to tell me  
 22 anything about an attorney/client  
 23 communication.  
 24 I'm just asking you to tell me when  
 25 you learned that the gallery was scheduled to

Page 23

1 terminated in February of 2012?  
 2 A. No.  
 3 Q. Did you understand that you would be  
 4 terminated when you had that conversation in  
 5 February of 2012 when the gallery ceased  
 6 operations?  
 7 A. No, I didn't understand that.  
 8 Q. What employment with Knoedler did you  
 9 think you would have?  
 10 A. I wasn't certain what the employment  
 11 would be.  
 12 Q. Did you have any discussions with  
 13 Mr. Hammer about any employment you would have  
 14 after February of 2012 during that  
 15 conversation?  
 16 A. Yes.  
 17 Q. What was the discussion?  
 18 A. That he might wish me to stay on to  
 19 wind down the operation.  
 20 Q. And did you say anything about your  
 21 willingness to stay on to wind down the  
 22 operation?  
 23 A. I think I was considering it.  
 24 Q. When you were told that the gallery  
 25 was closing abruptly, why did you resign

Page 22

1 close in February of 2012.  
 2 A. It was sometime in the summer months  
 3 of 2011.  
 4 Q. Do you remember which month in the  
 5 summer?  
 6 A. Middle summer. I have no idea.  
 7 Q. And how did you learn that the  
 8 gallery was scheduled to close in February of  
 9 2012?  
 10 MS. DeCARMINE: Same caution.  
 11 A. I learned that through a conversation  
 12 with Mr. Hammer.  
 13 Q. And where did that conversation take  
 14 place?  
 15 A. On the telephone.  
 16 Q. What was the substance of that  
 17 conversation you had with Mr. Hammer about the  
 18 gallery's scheduled closing in February 2012?  
 19 A. That the premises that we occupied  
 20 was sold, and we -- our lease was to terminate  
 21 in February of 2012.  
 22 Q. Anything else you recall about that  
 23 conversation?  
 24 A. No.  
 25 Q. Did you discuss whether you would be

Page 24

1 instead of staying on to wind down the  
 2 gallery's operations?  
 3 MS. DeCARMINE: Objection.  
 4 A. The gallery was facing a lawsuit, and  
 5 I was concerned about the -- any negative press  
 6 that might affect me personally.  
 7 Q. And what gave you concerns that the  
 8 press might affect you personally?  
 9 A. Because I'm an employee of the  
 10 company.  
 11 Q. Did you have any discussions with  
 12 Mr. Hammer about your reasons for resigning in  
 13 November of 2011?  
 14 A. I did.  
 15 Q. And what was the substance of that  
 16 communication? Was there more than one  
 17 communication with Mr. Hammer about the reasons  
 18 you resigned?  
 19 MR. STEEL: Which question are you  
 20 asking?  
 21 MR. CAHILL: My question is: Was  
 22 there more than one communication with  
 23 Mr. Hammer about the reasons for his  
 24 resignation in November of 2011?  
 25 MS. DeCARMINE: And I would caution

Page 25

1 that if these communications were also  
2 with lawyers present, that you should not  
3 answer.

4 A. Those communications with Mr. Hammer  
5 were not with lawyers present. I had one  
6 telephone conversation with him, and I  
7 submitted a written resignation.

8 Q. Where did the telephone conversation  
9 fall in relation to the written communication?  
10 Was it before or after?

11 A. Prior, before.

12 Q. Was it on the same day as the written  
13 communication?

14 A. It was.

15 Q. What was the substance of your  
16 telephone communication with Mr. Hammer?

17 A. That I felt it was in my best  
18 interest to seek other employment opportunities  
19 and to get on with my life.

20 Q. Do you recall anything else you said  
21 to Mr. Hammer?

22 A. That I wished him well. And that was  
23 about it.

24 Q. Do you recall anything that  
25 Mr. Hammer said to you?

Page 27

1 A. Because of the pending litigation.

2 Q. Would the pending litigation  
3 compromise you in particular or just anyone who  
4 was winding down the gallery?

5 MR. MASLO: Objection.

6 MS. DeCARMINE: Objection.

7 A. At that point I was concerned only  
8 with myself.

9 Q. Did you speak with anyone else  
10 besides Mr. Hammer and Mr. Barzune about your  
11 decision to resign?

12 MR. STEEL: Except counsel, I assume?

13 Q. Let me just clarify.

14 Did you speak with counsel about your  
15 decision to resign?

16 MS. DeCARMINE: Objection. And don't  
17 answer that to the extent that you -- I'm  
18 going to instruct him not to answer it.

19 Q. When you heard from Mr. Kontrimas  
20 that the gallery was going to close abruptly,  
21 did you say anything to Mr. Kontrimas?

22 MS. DeCARMINE: I'm going to object  
23 to that. That came out. And I really  
24 should move to strike his answer because  
25 it was privileged. But because there was

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1 A. He expressed his understanding and  
2 he, too, wished me well.

3 Q. Was your desire to seek other  
4 employment opportunities and get on with your  
5 life the only reasons you gave Mr. Hammer for  
6 your decision to resign?

7 A. Yes.

8 Q. What else did you tell him were  
9 reasons that you were resigning?

10 A. I'm sorry. I misunderstood your  
11 question. You said -- can you repeat your  
12 question, how you stated it?

13 Q. My question was: Was your desire to  
14 seek other employment opportunities and get on  
15 with your life the only reasons you gave  
16 Mr. Hammer for your decision?

17 A. And I said: Yes, they were the only  
18 reasons.

19 Q. Okay. Did you tell Mr. Hammer that  
20 you -- your ability to wind down the gallery  
21 would be compromised in any way?

22 A. I did.

23 Q. And why was your ability to wind down  
24 the gallery compromised at the time of your  
25 resignation?

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1 no real warning that he was going to come  
2 out with something that was privileged, to  
3 continue to question on that line of  
4 questioning is improper. Do not answer.

5 MR. CAHILL: The statement that the  
6 gallery is going to close abruptly is not  
7 a statement -- is not a privileged  
8 statement. It's a statement of fact.

9 MS. DeCARMINE: Attorney/client is  
10 also context. It's not just that  
11 something is out there as an independent  
12 fact out in the universe. There's a  
13 context in which your client communicates.  
14 That was in the context of an  
15 attorney/client communication.

16 MR. CAHILL: We disagree about that.

17 Q. So the last question was ...

18 MR. CAHILL: So there's an  
19 instruction not to answer that?

20 MS. DeCARMINE: There is. That line  
21 of questioning should be left.

22 MR. CAHILL: I don't agree, but I  
23 can't --

24 MS. DeCARMINE: I understand we  
25 disagree.

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1 Q. And what was his position?  
 2 A. I don't know what his official  
 3 position was, but ...  
 4 Q. What understanding did you have of  
 5 Mr. Lynch's position at Knoedler, if any?  
 6 A. I don't know that I had an  
 7 understanding other than he was overseeing the  
 8 wind-down of the operation.  
 9 Q. Did you actually sell any works of  
 10 art in Knoedler's that you were introduced to  
 11 at Knoedler?  
 12 A. Yes.  
 13 Q. Did you reach an agreement on the  
 14 price of the works of art that were sold?  
 15 A. Naturally.  
 16 Q. With whom at Knoedler did you reach  
 17 an agreement?  
 18 A. With Mr. Lynch.  
 19 Q. And do you know if Mr. Lynch had  
 20 discussions with anyone else at Knoedler about  
 21 the prices of works that you were dealing with?  
 22 A. No, I don't.  
 23 Q. How many works of art from Knoedler  
 24 did you sell after you left Knoedler?  
 25 A. I remember four.

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1 Q. Can you give me an estimate of the  
 2 total value?  
 3 A. Yeah. I would say it was upwards  
 4 around a million three, \$1,300,000.  
 5 Q. Were you compensated in connection  
 6 with any of those sales?  
 7 A. Yes.  
 8 Q. And who compensated you?  
 9 A. The purchaser.  
 10 Q. And was the compensation in the form  
 11 of a commission?  
 12 A. Correct.  
 13 Q. Was there more than one purchaser?  
 14 A. Yes.  
 15 Q. Did the commissions vary by  
 16 purchasers?  
 17 A. Yes.  
 18 Q. Can you give me the range of the  
 19 commissions?  
 20 A. In terms of value or --  
 21 Q. In terms of percentage.  
 22 A. In terms of percentage? Yes. 10 to  
 23 15 percent, I would say.  
 24 Q. Did you ever talk with Mr. Hammer  
 25 about the David Herbert pictures?

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1 A. Yes.  
 2 Q. What did you understand the David  
 3 Herbert pictures to be?  
 4 A. Again, I don't know that I have an  
 5 understanding of what the David Herbert  
 6 pictures were, other than he was a dealer, a  
 7 private dealer and a gallerist of some note.  
 8 And works came through -- either through his  
 9 estate or through his hands.  
 10 Q. When did you first hear of David  
 11 Herbert?  
 12 A. I don't -- I don't recall. I don't  
 13 recall.  
 14 Q. Now, do you recall whether it was  
 15 before or after you joined Knoedler?  
 16 A. It was certainly after I joined  
 17 Knoedler.  
 18 Q. And when did you first discuss David  
 19 Herbert pictures with Mr. Hammer?  
 20 A. In 2009.  
 21 Q. And what was your discussion about --  
 22 at the time that you first discussed the David  
 23 Herbert pictures with Mr. Hammer in 2009, did  
 24 you have any understanding of whether  
 25 Mr. Hammer had ever heard of David Herbert

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1 before?  
 2 MS. DeCARMINE: I'm going to caution  
 3 the witness: If this was in the context  
 4 of an attorney meeting, do not answer.  
 5 A. That conversation was with an  
 6 attorney.  
 7 Q. And do you recall the month in 2009?  
 8 A. Again, it was the summer, but I do  
 9 not recall the month.  
 10 MS. DeCARMINE: I'm going to give a  
 11 continuing instruction that if the  
 12 witness, when he's asked a question about  
 13 a particular conversation, if there was an  
 14 attorney present, that he somehow will let  
 15 us know that, because it's very hard for  
 16 me to tell. Up 'til now I thought you  
 17 were talking about a conversation simply  
 18 with Mr. Hammer. And that's my look out,  
 19 but certainly I wasn't aware.  
 20 Q. And who was the -- who was the  
 21 attorney who was present?  
 22 A. It was an attorney with the firm of  
 23 Herrick something and something, as I recall.  
 24 Q. Was that the first time you had -- do  
 25 you know the name of the attorney?

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1 A. I believe -- I think his name was  
 2 David Rosenfield, if I remember correctly.  
 3 MS. DeCARMINE: That is as far as I'm  
 4 going to let him answer on this line.  
 5 Q. Who else was present at the meeting  
 6 besides David Rosenfield?  
 7 MS. DeCARMINE: I'm not going --  
 8 MR. CAHILL: You're not going to let  
 9 me ask who else was present?  
 10 MS. DeCARMINE: No.  
 11 MR. CAHILL: And you're instructing  
 12 him not to answer that?  
 13 MS. DeCARMINE: I'm instructing him  
 14 not to answer that.  
 15 MR. CAHILL: I will just say that  
 16 there is -- I think there is no legal  
 17 basis for saying that identifying the  
 18 people at a meeting is a basis of an  
 19 instruction not to answer just because an  
 20 attorney was present. But, again, we'll  
 21 agree to disagree. But I do want to make  
 22 it clear that that is a question that I  
 23 will seek a ruling on.  
 24 BY MR. CAHILL:  
 25 Q. If I represent to you that Herrick,

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1 Q. Do you know who introduced Knoedler  
 2 to the law firm of Herrick?  
 3 MS. DeCARMINE: Objection.  
 4 MR. MASLO: Objection.  
 5 A. Yes.  
 6 Q. And who was that?  
 7 A. Howard Shaw.  
 8 Q. Did you ever have any conversations  
 9 with Howard Shaw prior to Knoedler's retaining  
 10 Herrick about Herrick?  
 11 MS. DeCARMINE: And I'm going to  
 12 caution: To the extent any of those  
 13 conversations were in the context of the  
 14 hiring of the lawyers or to the extent  
 15 that any of those conversations were with  
 16 any other lawyers from Knoedler present,  
 17 not to answer.  
 18 A. No.  
 19 Q. And who is Howard Shaw?  
 20 A. He is an employee of Hammer  
 21 Galleries.  
 22 Q. Did you ever hear of a special  
 23 committee being formed at Knoedler?  
 24 MS. DeCARMINE: If you heard of that  
 25 with attorneys present, I do not want you

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1 Feinstein signed a retainer agreement with  
 2 Knoedler in August of 2009, does that refresh  
 3 your recollection about when that meeting  
 4 occurred?  
 5 MR. STEEL: Objection.  
 6 MS. DeCARMINE: Objection.  
 7 MR. CAHILL: Am I to answer?  
 8 MR. STEEL: Yes.  
 9 MS. DeCARMINE: You can answer just  
 10 when -- if it refreshes your recollection.  
 11 A. It does.  
 12 Q. When -- without telling me what was  
 13 said, when did the meeting occur?  
 14 A. Again, you just said it was in August  
 15 of 2009. Sometime in the summer of 2009 is  
 16 what I remember.  
 17 Q. And prior to that meeting, have you  
 18 ever heard of the law firm of Herrick  
 19 something, the law firm with the name "Herrick"  
 20 before?  
 21 A. No.  
 22 Q. Do you know how -- withdraw that.  
 23 Do you know -- had you ever heard of  
 24 David Rosenfield before?  
 25 A. No.

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1 to answer that. It's privileged.  
 2 A. No.  
 3 Q. No, you've never heard of a special  
 4 committee at Knoedler?  
 5 A. Correct. No, I never heard of it.  
 6 Q. Prior to the summer of 2009, did you  
 7 ever have any discussion with Michael Hammer  
 8 concerning David Herbert pictures?  
 9 MR. MASLO: Objection.  
 10 A. No.  
 11 Q. Prior to the summer of 2009, did you  
 12 ever have a discussion with Michael Hammer  
 13 concerning the sales of any work of art?  
 14 MS. DeCARMINE: Objection.  
 15 A. No.  
 16 Q. How much contact did you have with  
 17 Michael Hammer before the summer of 2009 during  
 18 the time you worked at Knoedler?  
 19 A. Extremely minimal contact.  
 20 Q. And what was the nature of your  
 21 contact with Michael Hammer before the summer  
 22 of 2009?  
 23 A. I might see him in passing as he  
 24 visited the gallery, which he did very  
 25 infrequently.



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1 A. I don't know. I don't think so. I  
 2 think that's why you see them here as "NFS" or  
 3 not for sale.  
 4 Q. Where would you look in the Knoedler  
 5 Gallery records for sales of work by -- that  
 6 came in through Mr. Masaccio?  
 7 A. The same place you'd look for sales  
 8 of any work.  
 9 Q. And where is that?  
 10 A. In the database and in the files.  
 11 Q. Do you know if Knoedler sold any  
 12 works brought in by Mr. Masaccio to anyone?  
 13 A. I believe so.  
 14 Q. Do you know if Knoedler ever sought  
 15 out anyone who had bought a work brought in by  
 16 Mr. Masaccio to refund their money?  
 17 MS. DeCARMINE: Objection to form.  
 18 A. Do I know -- sorry?  
 19 Q. If Knoedler ever sought out anyone  
 20 who bought a work brought into Knoedler by  
 21 Mr. Masaccio to refund their money?  
 22 A. I don't know.  
 23 Q. Do you know if anyone at Knoedler  
 24 ever communicated your concerns about  
 25 Mr. Masaccio to anyone who had purchased a work

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1 brought in by Mr. Masaccio?  
 2 MS. DeCARMINE: Objection to form.  
 3 A. I don't know.  
 4 Q. Do you know if anyone ever -- if  
 5 Mr. Masaccio ever brought in a work attributed  
 6 to Mark Rothko?  
 7 A. I don't know.  
 8 MR. STEEL: It's one o'clock, and,  
 9 frankly, I would like a break.  
 10 MR. CAHILL: Okay.  
 11 (There is a luncheon recess  
 12 taken.)  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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1 AFTERNOON SESSION  
 2 MR. CAHILL: I distributed  
 3 Exhibit 161 to everyone just so everyone  
 4 has a copy of it.  
 5 BY MR. CAHILL:  
 6 Q. And while you have a copy of that, do  
 7 you recall seeing that work, the work of -- the  
 8 image of which is Exhibit 161?  
 9 A. No.  
 10 Q. No?  
 11 Referring you back to Plaintiff's  
 12 Exhibit 324, can you tell me --  
 13 MR. STEEL: 324A?  
 14 MR. CAHILL: 324A, yes. Thank you.  
 15 Q. Can you tell me which, if any, of  
 16 these were brought in by Mr. Masaccio and  
 17 which, if any, were brought in by Ms. Rosales?  
 18 A. Referring first to page 2 --  
 19 Q. Can you tell -- and if you don't  
 20 know, it's perfectly fine.  
 21 A. I'm going to circle back to page 1 if  
 22 you don't mind. I prefer to start on page 2.  
 23 Q. Oh, okay. That's fine.  
 24 A. So the works listed on page 2 are  
 25 works that, to my knowledge, came in from

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1 Ms. Rosales --  
 2 Q. All of them?  
 3 A. Yes.  
 4 -- and as well as the works on page  
 5 3. The works on page 1, it's not entirely  
 6 clear to me the source of these works.  
 7 Q. Let me see if I can show you --  
 8 A. I do not think they're Ms. Rosales'  
 9 supplied works, but I don't know.  
 10 Q. Let me show you what's previously  
 11 been marked as Plaintiff's Exhibit 311A and see  
 12 if that can refresh your recollection.  
 13 A. I'm sorry.  
 14 Q. 311A.  
 15 MR. STEEL: Okay, got it.  
 16 Q. And so, does anything in -- first of  
 17 all, did you write Plaintiff's 311A?  
 18 A. Yes, yes.  
 19 Q. And did you send it to Mr. Hammer?  
 20 A. Yes.  
 21 Q. And do you recall what was included  
 22 with -- what, if anything, was included with  
 23 your letter to Mr. Hammer?  
 24 A. I would just refer to what I stated  
 25 in the letter. There was a list, an inventory

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1 list.  
 2 Q. And did you create that list?  
 3 A. No.  
 4 Q. Who created it?  
 5 A. Someone at the gallery. I don't  
 6 know. One of the assistants, perhaps a  
 7 registrar or -- I don't know.  
 8 Q. And where at the gallery would that  
 9 list have been maintained while you were at the  
 10 gallery?  
 11 A. I would imagine Melissa would  
 12 probably maintain it in that it was part of my  
 13 correspondence.  
 14 Q. Do you have a file of your  
 15 correspondence?  
 16 A. Melissa maintained a file of my  
 17 correspondence.  
 18 Q. Was that paper -- a file of paper  
 19 copies or --  
 20 A. I don't know. I would imagine some  
 21 combination of paper and electronic file.  
 22 Q. Were you aware where the paper files  
 23 were maintained?  
 24 A. No.  
 25 Q. Was there a filing cabinet?

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1 Q. Do you know how many Rosales pictures  
 2 were on the list?  
 3 A. I don't.  
 4 Q. Do you know how many Masaccio  
 5 pictures were on the list?  
 6 A. I don't.  
 7 Q. And did you change the designation to  
 8 NFS?  
 9 A. Not me personally, no.  
 10 Q. But did you make the decision to  
 11 change the designation to NFS?  
 12 A. I don't recall. It might have been  
 13 in consultation with Mr. Hammer, which is what  
 14 this seems to refer to.  
 15 Q. When you say, "We have changed their  
 16 designation" --  
 17 A. We, the gallery.  
 18 Q. Yes, okay.  
 19 Do you recall discussing this list  
 20 with Mr. Hammer?  
 21 MS. DeCARMINE: I'll caution if there  
 22 is an attorney privilege --  
 23 A. No. I just recall sending it to him.  
 24 He would ask for a list, an inventory list from  
 25 time to time.

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1 A. There were filing cabinets. I don't  
 2 know if it was in my office or by where she  
 3 sat.  
 4 Q. And how about the electronic files of  
 5 your correspondence? Where were they  
 6 maintained?  
 7 A. Wherever one keeps electronic files.  
 8 Q. You don't know?  
 9 A. No.  
 10 Q. Well, I can represent to you we don't  
 11 have the enclosures. That's why I can't show  
 12 you that. But I would like to ask you --  
 13 referring to the second paragraph, it says,  
 14 "Please, note that with respect to the 'Rosales  
 15 and Masaccio pictures,' we have changed their  
 16 designation for the time being to NFS, not for  
 17 sale."  
 18 Do you have any recollection of what  
 19 you're referring to as the "Rosales and  
 20 Masaccio pictures" on that list?  
 21 A. Well, we're not looking at a list.  
 22 We're just looking at --  
 23 Q. Yeah.  
 24 A. So I can't refer to a -- I can't  
 25 really refer to them based on this.

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1 Q. How often did Mr. Hammer ask for an  
 2 inventory list?  
 3 A. Occasionally.  
 4 Q. If you can, can you put a time frame  
 5 on that? Monthly?  
 6 A. No. Maybe a couple times a year.  
 7 Q. Do you know why Mr. Hammer asked  
 8 for -- requested the updated list of  
 9 Knoedler-owned inventory at or about the time  
 10 you sent it to him in October of --  
 11 A. I think so.  
 12 Q. Do you know why he asked for that?  
 13 A. I think so, yes.  
 14 Q. Why is that?  
 15 A. I think we were reviewing the pricing  
 16 of works and readjusting, reevaluating.  
 17 Q. Did you have any discussions with  
 18 Mr. Hammer about the pricing of works?  
 19 A. No. I mean, he would leave that to  
 20 us. It wasn't sort of his knowledge, but he  
 21 would ask for it from time to time.  
 22 Q. Did you have any discussion with  
 23 Mr. Hammer about the Masaccio or Rosales works  
 24 in or about October of 2009?  
 25 MS. DeCARMINE: Objection.



# Exhibit C

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DOMENICO DE SOLE and	)	
ELEANORE DE SOLE,	)	
individually and as assignees	)	
of LAURA DE SOLE,	)	
Plaintiffs,	)	
-against-	)	12 civ. 2313 (PGG)
	)	
KNOEDLER GALLERY, LLC,	)	
d/b/a KNOEDLER & COMPANY,	)	
ANN FREEDMAN, GLAFIRA ROSALES,	)	
JOSE CARLOS BERGANTINOS DIAZ,	)	
MICHAEL HAMMER, and	)	
JAIME ANDRADE,	)	
Defendants.	)	
	)	
JOHN D. HOWARD individually	)	
and as an assignee of	)	
JAIME FRANKFURT, LLC,	)	
Plaintiff,	)	
-against-	)	12 civ. 5263 (PGG)
	)	
ANN FREEDMAN, GLAFIRA ROSALES,	)	
KNOEDLER GALLERY, LLC,	)	
d/b/a KNOEDLER & COMPANY,	)	
MICHAEL HAMMER, 8-31 HOLDINGS,	)	
INC., JOSE CARLOS BERGANTINOS	)	
DIAZ, and JAIME R. ANDRADE,	)	
Defendants.	)	
	)	

DEPOSITION OF MICHAEL HAMMER  
New York, New York  
Wednesday, May 8, 2013  
9:34 a.m.

Reported by:  
Jennifer Ocampo-Guzman, CRR, CLR  
JOB NO. 30070

<p>1 2 3 4 5 6 7 8 May 8, 2013 9 9:34 a.m. 10 11 Deposition of MICHAEL HAMMER, 12 held at the offices of Fulbright &amp; 13 Jaworski, LLP, 666 Fifth Avenue, New 14 York, New York, pursuant to notice, 15 before Jennifer Ocampo-Guzman, a Notary 16 Public of the State of New York. 17 18 19 20 21 22 23 24 25</p>	<p>2 4 1 2 APPEARANCES (Continued): 3 Attorneys for Defendant Ann Freedman 4 BOIES, SCHILLER &amp; FLEXNER, LLP 5 10 North Pearl Street, 4th Floor 6 Albany, New York 12207 7 BY: LUKE NIKAS, ESQ. 8 lnikas@bsfillp.com 9 10 Attorneys for Defendants Knoedler 11 Gallery, LLC, d/b/a Knoedler &amp; Company, 12 Michael Hammer and 8-31 Holdings, Inc. 13 FULBRIGHT &amp; JAWORSKI, LLP 14 666 Fifth Avenue 15 New York, New York 10103-3198 16 BY: CHARLES D. SCHMERLER, ESQ. 17 cschmerler@fulbright.com 18 SARAH E. O'CONNELL, ESQ. 19 soconnell@fulbright.com 20 ANDRIUS R. KONTRIMAS, ESQ. (Houston) 21 akontrimas@fulbright.com 22 23 24 25</p>
<p>3 1 2 APPEARANCES: 3 4 Attorneys for Plaintiff John Howard 5 CAHILL PARTNERS, LLP 6 58 West 40th Street 7 New York, New York 10018 8 BY: JOHN CAHILL, ESQ. 9 jcahill@CahillLawFirm.com 10 11 Attorneys for Plaintiffs Domenico De Sole 12 and Eleanore De Sole 13 CLARICK GUERON REISBAUM, LLP 14 40 West 25th Street, 12th Floor 15 New York, New York 10010 16 BY: GREGORY A. CLARICK, ESQ. 17 gclarick@cgr-law.com 18 AARON CROWELL, ESQ. 19 acrowell@cgr-law.com 20 21 22 23 24 25</p>	<p>5 1 2 MICHAEL HAMMER, called as a 3 witness, having been duly sworn by a Notary 4 Public, was examined and testified as 5 follows: 6 EXAMINATION BY 7 MR. CLARICK: 8 Q. Good morning, Mr. Hammer. 9 A. Good morning. 10 Q. As I think you know, I'm Gregory 11 Clarick. I'm a lawyer in this action for the 12 plaintiffs, Domenico and De Sole, Domenico 13 and Eleanore De Sole. 14 This morning I will be asking you a 15 series of questions, and I would like you to 16 answer them to your best abilities. If you 17 have any trouble understanding any question 18 that I ask at any time, please ask me to 19 rephrase it. I would rather have a clear 20 record and know you understand my questions 21 than have you guessing at them, as if I asked 22 a poor question, which happens on occasion. 23 And I would ask that you actually 24 answer any question audibly, because the 25 court reporter can't take down nods or</p>

<p style="text-align: right;">158</p> <p>1 Hammer</p> <p>2 is no point going on and on about this.</p> <p>3 Certainly you are entitled to take</p> <p>4 whatever position you deem best. It is</p> <p>5 not that I am not instructing him that</p> <p>6 there is a privilege. What I am doing</p> <p>7 is giving you an opportunity to get an</p> <p>8 answer. You can infer, and we can agree</p> <p>9 to this on the record, you can infer</p> <p>10 that there is a privilege that attaches</p> <p>11 by my statement, and so you will have, I</p> <p>12 think, what you want. But I am allowing</p> <p>13 you to get an answer and therefore</p> <p>14 avoiding a fight later on.</p> <p>15 If you choose not to take an</p> <p>16 answer, that's your decision. I'm</p> <p>17 simply, simply giving you an opportunity</p> <p>18 to move the deposition along and get</p> <p>19 some further information. But as I</p> <p>20 said, it is certainly not my objective</p> <p>21 to argue with you about it, you are free</p> <p>22 to take whatever position you like, and</p> <p>23 I won't debate it with you any further.</p> <p>24 MR. CLARICK: Just so we're clear,</p> <p>25 you may take whatever position as you</p>	<p style="text-align: right;">160</p> <p>1 Hammer</p> <p>2 A. Yes.</p> <p>3 <b>Q. When did you first hear that?</b></p> <p>4 MR. SCHMERLER: I will instruct you</p> <p>5 not to disclose anything which would</p> <p>6 reflect on conversations with counsel,</p> <p>7 but otherwise you may answer that</p> <p>8 question.</p> <p>9 <b>Q. You have no answer, you have no</b></p> <p>10 <b>answer that's not privileged? Is that</b></p> <p>11 <b>your --</b></p> <p>12 MR. SCHMERLER: That's a legal</p> <p>13 question. What I've instructed him is</p> <p>14 not to answer, if it will reflect or</p> <p>15 tend to disclose privileged</p> <p>16 communications with counsel.</p> <p>17 <b>Q. Did you ever discuss with</b></p> <p>18 <b>Ms. Freedman the sale of --</b></p> <p>19 MR. CLARICK: Withdrawn.</p> <p>20 <b>Q. Did you and Ms. Freedman ever</b></p> <p>21 <b>discuss Knoedler's sale of works owned by Mr.</b></p> <p>22 <b>X?</b></p> <p>23 A. I'm not -- I mean -- because I was</p> <p>24 thinking about one thing, I'm not sure if Mr.</p> <p>25 X, but I never would make it a policy or a</p>
<p style="text-align: right;">159</p> <p>1 Hammer</p> <p>2 think is appropriate. You may instruct</p> <p>3 him as what you think is appropriate.</p> <p>4 If Mr. Hammer answers questions, we</p> <p>5 certainly are not agreeing that we do</p> <p>6 not view that as a waiver. And to the</p> <p>7 extent it is a waiver, and we're</p> <p>8 entitled to enforce it as a waiver, we</p> <p>9 have every intention of doing so.</p> <p>10 MR. SCHMERLER: I must say that</p> <p>11 that is a very odd and unusual position</p> <p>12 to take in our business, but you are</p> <p>13 free to take it. And I understand you</p> <p>14 went out, you had a conference with Mr.</p> <p>15 Howard's counsel, that's your view,</p> <p>16 that's your view; but I must tell you,</p> <p>17 you are on the wrong side of the fence</p> <p>18 on this.</p> <p>19 Go ahead. It's your deposition.</p> <p>20 BY MR. CLARICK:</p> <p>21 <b>Q. Mr. Hammer, did there come a time</b></p> <p>22 <b>that you learned that Knoedler was selling</b></p> <p>23 <b>works owned by Mr. X?</b></p> <p>24 MR. SCHMERLER: You may answer yes</p> <p>25 or no.</p>	<p style="text-align: right;">161</p> <p>1 Hammer</p> <p>2 habit of talking about any sales of any</p> <p>3 pictures from anywhere. I mean that's just</p> <p>4 not what I did. That was her job, her</p> <p>5 business.</p> <p>6 Again, I don't -- one thing that</p> <p>7 I'm thinking of, and I don't know if it's Mr.</p> <p>8 X, as you described it or not. I don't know</p> <p>9 if I can put something out there that I can</p> <p>10 remember. I don't know if it was Mr. X, I</p> <p>11 don't know if it was responsive to what</p> <p>12 you're asking.</p> <p>13 <b>Q. What do you remember?</b></p> <p>14 A. It was not the sale of the picture</p> <p>15 but the actual taking back of a picture that</p> <p>16 she had sold. That's -- I didn't talk to her</p> <p>17 about sales.</p> <p>18 <b>Q. What picture are you recalling that</b></p> <p>19 <b>was taken back after it was sold?</b></p> <p>20 A. It was a -- I believe, I think, I</p> <p>21 think it was a Jackson Pollock painting sold</p> <p>22 to a Jack Levy.</p> <p>23 <b>Q. And before you had a conversation</b></p> <p>24 <b>with Ms. Freedman about that painting, was</b></p> <p>25 <b>there ever an occasion that you and</b></p>

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<p style="text-align: right;">262</p> <p>1 Hammer</p> <p>2 Q. And before you came to New York,</p> <p>3 did you have a discussion with anyone about</p> <p>4 the substance of the business that you were</p> <p>5 coming to New York to discuss?</p> <p>6 A. Absolutely not. That's why I</p> <p>7 hopped on a plane and came out.</p> <p>8 Q. Before that date, do you know</p> <p>9 whether Knoedler Gallery had received a</p> <p>10 subpoena from any government entity?</p> <p>11 A. I don't know about anything in the</p> <p>12 past, but I know they had not received a</p> <p>13 subpoena, no.</p> <p>14 Q. In connection with the Rosales</p> <p>15 collection works?</p> <p>16 A. Yes, yes.</p> <p>17 Q. Do you know whether Herrick</p> <p>18 conducted any kind of investigation, after</p> <p>19 your first meeting with Herrick?</p> <p>20 MR. SCHMERLER: You can answer that</p> <p>21 yes or no.</p> <p>22 A. Yes.</p> <p>23 Q. Do you know what Herrick did to</p> <p>24 conduct its investigation?</p> <p>25 MR. SCHMERLER: I would caution you</p>	<p style="text-align: right;">264</p> <p>1 Hammer</p> <p>2 with its investigation?</p> <p>3 MR. SCHMERLER: Objection to form.</p> <p>4 You may answer.</p> <p>5 A. Could you --</p> <p>6 Q. Did you ever talk with another,</p> <p>7 with a Knoedler employee about any, any</p> <p>8 interview that Herrick conducted, in</p> <p>9 connection with its investigation?</p> <p>10 MR. SCHMERLER: Same objection.</p> <p>11 You can answer the question.</p> <p>12 A. I can't recall specifically.</p> <p>13 Q. Do you know if Herrick gathered</p> <p>14 documents from Knoedler, in connection with</p> <p>15 its investigation?</p> <p>16 MR. SCHMERLER: Yes or no, you can</p> <p>17 answer.</p> <p>18 A. Yes.</p> <p>19 Q. Did Herrick gather any documents</p> <p>20 from you, in connection with the</p> <p>21 investigation?</p> <p>22 MR. SCHMERLER: Yes or no you can</p> <p>23 answer.</p> <p>24 A. I don't know if that's a yes or no</p> <p>25 answer.</p>
<p style="text-align: right;">263</p> <p>1 Hammer</p> <p>2 not to disclose any communications with</p> <p>3 counsel. Otherwise, you may answer that</p> <p>4 question.</p> <p>5 A. I can't.</p> <p>6 Q. You can't.</p> <p>7 Do you know if Herrick conducted</p> <p>8 any interviews, in connection with the</p> <p>9 investigation?</p> <p>10 MR. SCHMERLER: Same instruction,</p> <p>11 do not disclose communications you</p> <p>12 learned from counsel. Otherwise, you</p> <p>13 may answer that question.</p> <p>14 A. So I would say, other than with</p> <p>15 counsel, I would say no.</p> <p>16 Q. Other than --</p> <p>17 THE WITNESS: Is that correct?</p> <p>18 A. I'm not sure how to word it</p> <p>19 correctly.</p> <p>20 Q. Fine.</p> <p>21 Just so that we're clear, other</p> <p>22 than discussions you may have had with</p> <p>23 counsel present, did you ever discuss with</p> <p>24 any other Knoedler employee any interview</p> <p>25 that Herrick had conducted, in connection</p>	<p style="text-align: right;">265</p> <p>1 Hammer</p> <p>2 MR. SCHMERLER: It is a yes or no</p> <p>3 question.</p> <p>4 Q. It's a yes or no question.</p> <p>5 MR. SCHMERLER: You want to hear it</p> <p>6 again?</p> <p>7 THE WITNESS: No.</p> <p>8 A. If you could just rephrase it.</p> <p>9 Q. Did you provider Herrick any</p> <p>10 documents, in connection with its</p> <p>11 investigation?</p> <p>12 A. Can you rephrase it again?</p> <p>13 Q. Did you, or someone on your behalf,</p> <p>14 provide Herrick any documents, in connection</p> <p>15 with the investigation?</p> <p>16 A. Not that I, from my personal, I</p> <p>17 can't recall. But, if you want to ask it</p> <p>18 differently.</p> <p>19 I'm happy to answer. Do you want</p> <p>20 me to answer the question?</p> <p>21 MR. KONTRIMAS: No.</p> <p>22 A. I know where you're going, I'm</p> <p>23 trying give it to you.</p> <p>24 MR. SCHMERLER: No, no, don't</p> <p>25 assume where he's going. Mr. Clarick is</p>

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<p style="text-align: right;">294</p> <p>1 Hammer</p> <p>2 Q. Do you recall, in October 2009, Mr.</p> <p>3 Del Deo informing you that there the Rosales</p> <p>4 and Masaccio pictures had had their</p> <p>5 designation changed to "not for sale"?</p> <p>6 A. I don't have a recollection of it,</p> <p>7 but.</p> <p>8 Q. Do you recall that, in fact --</p> <p>9 MR. CLARICK: Well, withdraw the</p> <p>10 question.</p> <p>11 Q. Do you know what he's referring to</p> <p>12 when he refers to the Rosales pictures?</p> <p>13 A. Yes, I think.</p> <p>14 Q. What is he referring to?</p> <p>15 A. The Rosales pictures. The Rosales</p> <p>16 pictures.</p> <p>17 Q. Do you mean -- what do you mean by</p> <p>18 that?</p> <p>19 A. The way I read it is with respect</p> <p>20 to the Rosales pictures.</p> <p>21 Q. What works comprise the Rosales</p> <p>22 pictures, to your understanding?</p> <p>23 A. I couldn't tell you. I couldn't</p> <p>24 list them.</p> <p>25 Q. Well, without listing them, is</p>	<p style="text-align: right;">296</p> <p>1 Hammer</p> <p>2 Q. Do you recall ever talking to</p> <p>3 anyone about the Masaccio pictures?</p> <p>4 A. No, I don't recall talking about</p> <p>5 those pictures.</p> <p>6 Q. With anyone?</p> <p>7 A. I don't recall, yeah.</p> <p>8 Q. Well, I'll just ask you about the</p> <p>9 Rosales pictures, since you do recall those.</p> <p>10 The document states that their</p> <p>11 designation was changed to "not for sale."</p> <p>12 Do you know why that occurred?</p> <p>13 A. I believe so.</p> <p>14 Q. Well, I'll ask you a foundational</p> <p>15 question.</p> <p>16 Do you know if, in fact, that</p> <p>17 occurred?</p> <p>18 A. I have no reason not to, so I don't</p> <p>19 know for a fact, no.</p> <p>20 Does it make sense?</p> <p>21 Q. Is there an NFS, or not for sale,</p> <p>22 designation in some Knoedler inventory system</p> <p>23 or document?</p> <p>24 A. It says here, but I don't -- I</p> <p>25 don't know firsthand.</p>
<p style="text-align: right;">295</p> <p>1 Hammer</p> <p>2 there a way for you to describe, to your</p> <p>3 understanding, what the Rosales pictures</p> <p>4 were?</p> <p>5 A. Yes.</p> <p>6 Q. What's that?</p> <p>7 A. My understanding, right or wrong,</p> <p>8 would be pictures that were provided or</p> <p>9 whatever from Rosales.</p> <p>10 Q. In October 2009, did you have an</p> <p>11 understanding as to how many pictures Ms.</p> <p>12 Rosales had provided to Knoedler Gallery?</p> <p>13 A. Not that I can recall at all.</p> <p>14 Q. Did you ever come to have an</p> <p>15 understanding as to how many pictures she</p> <p>16 provided to Knoedler Gallery?</p> <p>17 A. Total number? I couldn't tell you</p> <p>18 the total number.</p> <p>19 Q. Do you see the reference in that</p> <p>20 line to the Masaccio pictures?</p> <p>21 A. I do.</p> <p>22 Q. And what were the Masaccio</p> <p>23 pictures?</p> <p>24 A. I have no recollection of what the</p> <p>25 Masaccio pictures are.</p>	<p style="text-align: right;">297</p> <p>1 Hammer</p> <p>2 Q. Okay. Do you know why the Rosales</p> <p>3 pictures had their designation changed to</p> <p>4 "not for sale"?</p> <p>5 A. I believe so.</p> <p>6 Q. Why is that?</p> <p>7 A. Again, I'm not, I believe it was as</p> <p>8 a result of questions being raised by</p> <p>9 subpoena from the government.</p> <p>10 Q. And did you have a discussion, at</p> <p>11 or about this time, with Mr. Del Deo about</p> <p>12 changing their designation to "not for sale"?</p> <p>13 A. I don't recall having that</p> <p>14 discussion.</p> <p>15 Q. Do you recall having that</p> <p>16 discussion with anybody?</p> <p>17 A. I don't recall having that</p> <p>18 discussion with anybody that I could</p> <p>19 pinpoint, yes.</p> <p>20 Q. This letter refers to an updated</p> <p>21 list of Knoedler being sent -- Knoedler</p> <p>22 inventory being sent to you.</p> <p>23 Do you know what happened to that</p> <p>24 list?</p> <p>25 MR. SCHMERLER: Object to the form.</p>

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<p style="text-align: right;">298</p> <p>1 Hammer</p> <p>2 <b>Q. Well, do you know if you received</b></p> <p>3 <b>that list?</b></p> <p>4 A. I really don't have a recollection</p> <p>5 of the letter or the list on that day, but.</p> <p>6 <b>Q. Do you see that the letter has on</b></p> <p>7 <b>it, on the right-hand side, "via FedEx"?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. To the best of your understanding,</b></p> <p>10 <b>did you receive this letter and the list by</b></p> <p>11 <b>FedEx?</b></p> <p>12 A. As I said, I don't recall; but I</p> <p>13 don't see a reason why I --</p> <p>14 <b>Q. Is there a reason why this letter</b></p> <p>15 <b>was not produced, as part of your production</b></p> <p>16 <b>in this lawsuit?</b></p> <p>17 MR. SCHMERLER: Object to the form.</p> <p>18 A. What do you mean, my production?</p> <p>19 <b>Q. As part of the documents that were</b></p> <p>20 <b>produced in this lawsuit from your files.</b></p> <p>21 A. Because, as I said, I don't recall</p> <p>22 seeing this, and I don't typically keep files</p> <p>23 in my office.</p> <p>24 <b>Q. And if you received a list in your</b></p> <p>25 <b>office --</b></p>	<p style="text-align: right;">300</p> <p>1 Hammer</p> <p>2 <b>Q. How about the list of</b></p> <p>3 <b>Knoedler-owned inventory, is that the type of</b></p> <p>4 <b>document you would typically not keep also?</b></p> <p>5 A. Perhaps. It depends on what it is.</p> <p>6 <b>Q. Did you recall receiving the list</b></p> <p>7 <b>of Knoedler-owned inventory?</b></p> <p>8 A. I think I already told you that I</p> <p>9 didn't specifically recall any one of these.</p> <p>10 <b>Q. If you did, if you did receive</b></p> <p>11 <b>them, but they're not in your possession,</b></p> <p>12 <b>would it be fair to conclude that you didn't</b></p> <p>13 <b>keep the documents, that, you know, you</b></p> <p>14 <b>shredded the documents, as you said?</b></p> <p>15 MR. SCHMERLER: Object to the form</p> <p>16 of the question.</p> <p>17 A. No.</p> <p>18 <b>Q. Was there somewhere else where you</b></p> <p>19 <b>would keep documents, when you received</b></p> <p>20 <b>documents in Culver City, if you were not</b></p> <p>21 <b>going keep them in your office?</b></p> <p>22 A. That's not what I was saying no to.</p> <p>23 <b>Q. What were you saying no to?</b></p> <p>24 A. You asked me, if I were to receive</p> <p>25 something like this in a list, a type of</p>
<p style="text-align: right;">299</p> <p>1 Hammer</p> <p>2 MR. CLARICK: Well, let me withdraw</p> <p>3 the question.</p> <p>4 <b>Q. Is this the type of document that</b></p> <p>5 <b>you would not typically keep in your office?</b></p> <p>6 A. Type of document? I don't</p> <p>7 typically, as I stated earlier, keep</p> <p>8 documents in my office.</p> <p>9 <b>Q. What do you do with them, documents</b></p> <p>10 <b>that you receive in your office?</b></p> <p>11 A. Depends on the documents.</p> <p>12 <b>Q. Well, what about this document,</b></p> <p>13 <b>what did you do with this document?</b></p> <p>14 A. As I stated earlier, I don't recall</p> <p>15 receiving it, so I can't tell you what I did</p> <p>16 with it.</p> <p>17 <b>Q. What do you typically do with</b></p> <p>18 <b>documents that you receive in your office,</b></p> <p>19 <b>that you do not keep?</b></p> <p>20 A. Again, depending on the document, I</p> <p>21 would shred it or get rid of it.</p> <p>22 <b>Q. So is this the type of document</b></p> <p>23 <b>that you would shred?</b></p> <p>24 A. I don't, again, I don't recall</p> <p>25 receiving it, it wasn't there.</p>	<p style="text-align: right;">301</p> <p>1 Hammer</p> <p>2 document that I would have shredded and I've</p> <p>3 already told you I don't remember necessarily</p> <p>4 receiving this.</p> <p>5 <b>Q. Is there somewhere other than in</b></p> <p>6 <b>your office that you keep documents that you</b></p> <p>7 <b>receive in your office?</b></p> <p>8 A. In general or -- like, I mean.</p> <p>9 MR. CLARICK: Sorry, it's boring,</p> <p>10 Chad.</p> <p>11 A. No, I mean in general or?</p> <p>12 <b>Q. In general.</b></p> <p>13 A. Possibly, yes.</p> <p>14 <b>Q. Where would that be?</b></p> <p>15 A. Where it originated, which would</p> <p>16 have been in Franklin Del Deo's office or the</p> <p>17 Knoedler's office.</p> <p>18 <b>Q. If you kept a copy of this</b></p> <p>19 <b>document, you may have kept it at Knoedler?</b></p> <p>20 MR. SCHMERLER: Object to the form.</p> <p>21 A. It's not what I said. You asked me</p> <p>22 what it would be. I said, if I received</p> <p>23 this, and on which you stated, would I have</p> <p>24 shredded or not, where else would I have kept</p> <p>25 it, and I said I kept it at Knoedler where it</p>

76 (Pages 298 to 301)



<p style="text-align: right;">302</p> <p>1 Hammer</p> <p>2 originated.</p> <p>3 <b>Q. How would it -- how would you move</b></p> <p>4 <b>a document from your office in Culver City,</b></p> <p>5 <b>California to Knoedler?</b></p> <p>6 MR. SCHMERLER: Object to the form.</p> <p>7 A. Again, that's not what I said. It</p> <p>8 would be where it was originated, because I</p> <p>9 wouldn't keep it.</p> <p>10 <b>Q. You're referring to a copy of the</b></p> <p>11 <b>document may be kept at Knoedler?</b></p> <p>12 A. No, that's not what I said either.</p> <p>13 <b>Q. Would you keep a copy of the</b></p> <p>14 <b>document at Knoedler?</b></p> <p>15 A. No.</p> <p>16 <b>Q. Do you have any, do you have any</b></p> <p>17 <b>idea of where the list that's referenced in</b></p> <p>18 <b>the letter exists today?</b></p> <p>19 MR. SCHMERLER: Object to the form.</p> <p>20 <b>Q. Or a copy of the list -- I'm sorry.</b></p> <p>21 <b>Do you have any idea where a copy</b></p> <p>22 <b>of the list that's referenced in the letter</b></p> <p>23 <b>is maintained today?</b></p> <p>24 MR. SCHMERLER: Object to the form,</p> <p>25 lack of foundation.</p>	<p style="text-align: right;">304</p> <p>1 Hammer</p> <p>2 government, to ensure that you maintained</p> <p>3 documents that were in your custody, related</p> <p>4 to the subpoena?</p> <p>5 A. I just told you, I don't have any</p> <p>6 documents; but I did what was instructed,</p> <p>7 which was to search.</p> <p>8 <b>Q. Did you take any steps to ensure</b></p> <p>9 <b>that you, after that date that the subpoena</b></p> <p>10 <b>was served, after that date, did you take any</b></p> <p>11 <b>steps to ensure that you did not destroy any</b></p> <p>12 <b>documents that were maintained in your</b></p> <p>13 <b>custody that related to the matters concerned</b></p> <p>14 <b>in the subpoena?</b></p> <p>15 A. We have no documents. Once the</p> <p>16 subpoena was served, I would have done it.</p> <p>17 Again --</p> <p>18 <b>Q. After Ann Freedman resigned from</b></p> <p>19 <b>Knoedler, did Knoedler ever again put up for</b></p> <p>20 <b>sale the Rosales works?</b></p> <p>21 MR. SCHMERLER: Objection, asked</p> <p>22 and answered. Also objection, lack of</p> <p>23 foundation.</p> <p>24 <b>Q. Do you know?</b></p> <p>25 A. As I told you the last time you</p>
<p style="text-align: right;">303</p> <p>1 Hammer</p> <p>2 A. Definitively or generally?</p> <p>3 <b>Q. Definitively.</b></p> <p>4 A. Then I would say, no. I don't know</p> <p>5 if the lawyers have it. I don't know where a</p> <p>6 copy of it is.</p> <p>7 <b>Q. Do you have any kind of document</b></p> <p>8 <b>retention policy for your own business?</b></p> <p>9 A. For which?</p> <p>10 <b>Q. Your own business.</b></p> <p>11 MR. SCHMERLER: Which business?</p> <p>12 <b>Q. Do you have any, for your --</b></p> <p>13 MR. CLARICK: Let me withdraw the</p> <p>14 question.</p> <p>15 <b>Q. Does 8-31, to your knowledge, have</b></p> <p>16 <b>a document retention policy?</b></p> <p>17 A. Not to my knowledge.</p> <p>18 <b>Q. Does Knoedler Gallery, to your</b></p> <p>19 <b>knowledge, have a document retention policy?</b></p> <p>20 A. Not to my knowledge. That's why I</p> <p>21 have accountant and auditors and lawyers, to</p> <p>22 make sure that all those policies are in</p> <p>23 place; but I'm not aware of them.</p> <p>24 <b>Q. Did you personally take any steps,</b></p> <p>25 <b>after Knoedler received the subpoena from the</b></p>	<p style="text-align: right;">305</p> <p>1 Hammer</p> <p>2 asked me that, not that I'm aware.</p> <p>3 <b>Q. And why not?</b></p> <p>4 A. Because they were not for sale.</p> <p>5 <b>Q. Why were they maintained as not for</b></p> <p>6 <b>sale?</b></p> <p>7 MR. SCHMERLER: Objection, asked</p> <p>8 and answered.</p> <p>9 A. The subpoena was received,</p> <p>10 everybody looked at it, the lawyers,</p> <p>11 everybody. This is what we needed to do,</p> <p>12 that's what was done.</p> <p>13 <b>Q. Any other reason why they were not</b></p> <p>14 <b>put up for sale, again, other than what</b></p> <p>15 <b>counsel advised you to do?</b></p> <p>16 MR. SCHMERLER: Objection.</p> <p>17 A. What else -- again, that's --</p> <p>18 they're not for sale; the subpoena says, the</p> <p>19 lawyers say --</p> <p>20 MR. SCHMERLER: Please make an</p> <p>21 effort not to disclose any</p> <p>22 communications with counsel. I know Mr.</p> <p>23 Clarick doesn't want you to do that.</p> <p>24 <b>Q. To the extent that there are works</b></p> <p>25 <b>that were provided by Glafira Rosales in</b></p>

77 (Pages 302 to 305)



# Exhibit D

## Knoedler Gallery, LLC Privilege Log - (Updated 3/22/2013)

Doc ID	Document Type	Date	Description	From	To	CC	Privilege Type
KG-00006991	E-mail	8/28/09	Email chain produced with confidential attorney-client communications redacted	Lord, Frank <flord@herrick.com>	Per Jensen <pjensen@knoedlergallery.com>	Michael <mah@hammerinternational.com> Rosenfield, David <drosenfeld@herrick.com>	Attorney/Client
KG-00006992	E-mail	8/28/09	Email produced regarding a Diebenkorn painting with confidential attorney-client communications redacted	Per Jensen <pjensen@knoedlergallery.com>	Lord, Frank <flord@herrick.com>		Attorney/Client
E00622404	Document	8/20/09	Document created by Melissa De Medeiros for purpose of providing to lawyers in anticipation of litigation	Melissa De Medeiros			Attorney/Client See In Re Grand Jury Proceedings, 2001 U.S. Dist. LEXIS 15646, at *98 (S.D.N.Y. Oct. 3, 2001)
E00627118	Memo	8/14/09	Memorandum written by Melissa De Medeiros for purpose of providing to lawyers in anticipation of litigation	Melissa De Medeiros			Attorney/Client See Work Product In Re Grand Jury Proceedings, 2001 U.S. Dist. LEXIS 15646, at *98 (S.D.N.Y. Oct. 3, 2001)
E00745155	E-mail	12/30/09	Email chain including public relations consultants hired by lawyers to advise on responding to potential media questions during pendency of grand jury investigation	Kathleen M. Blomquist <kblomquist@rubenstein.com>	frideleo@tmo.blackberry.net Howard Shaw <howard@hammenggalleries.com> Melissa De Medeiros <mdeemedeiros@knoedlergallery.com>	Andrius Kontrimas <akontirmas@fulbright.com> Frank Del Deo <fdeldeo@knoedlergallery.com> Marcia Horowitz <mhorowitz@rubenstein.com> Richard Lynich <rlyrich@hammenggalleries.com>	Attorney/Client Work Product See In re Grand Jury Subpoenas Dated March 24, 2003, 265 F. Supp. 2d 321, 330 31 (S.D.N.Y. 2003)
E00745244	E-mail	1/5/10	Email chain including public relations consultants hired by lawyers to advise on responding to potential media questions during pendency of grand jury investigation	Kathleen M. Blomquist <kblomquist@rubenstein.com>	Andrius Kontrimas <akontirmas@fulbright.com> Frank Del Deo <fdeldeo@knoedlergallery.com> Frank Deldeo <frideleo@tmo.blackberry.net> Kontrimas, Andrius R. <akontirmas@fulbright.com> Michael Hammer <mah@hr77.com>	Marcia Horowitz <mhorowitz@rubenstein.com>	Attorney/Client Work Product See In re Grand Jury Subpoenas Dated March 24, 2003, 265 F. Supp. 2d 321, 330 31 (S.D.N.Y. 2003)
E00745365	E-mail	12/23/09	Email chain including public relations consultants hired by lawyers to advise on responding to potential media questions during pendency of grand jury investigation	Kathleen M. Blomquist <kblomquist@rubenstein.com>	Frank Del Deo <fdeldeo@knoedlergallery.com>	Kontrimas, Andrius R. <akontirmas@fulbright.com> Marcia Horowitz <mhorowitz@rubenstein.com>	Attorney/Client Work Product See In re Grand Jury Subpoenas Dated March 24, 2003, 265 F. Supp. 2d 321, 330 31 (S.D.N.Y. 2003)

# Exhibit E

LYNN | CAHILL LLP

radcliman@lynncahill.com

September 19, 2012

BY E-MAIL

Charles D. Schmerler, Esq.  
Fulbright Jaworski LLP  
666 Fifth Avenue, 31<sup>st</sup> Floor  
New York, NY 10103

Luke Nikas, Esq.  
Boies, Schiller & Flexner LLP  
575 Lexington Avenue, 7<sup>th</sup> Floor  
New York, NY 10022

Silvia L. Serpe, Esq.  
Serpe Ryan LLP  
1115 Broadway, 11<sup>th</sup> Floor  
New York, NY 10010

Anastasios Sarikas, Esq.  
23-09 31<sup>st</sup> Street  
Astoria, NY 11105

Re: *Howard v. Freedman, et al.*, 12 CV 5263 (PGG)

Dear Counsel:

Now that the parties' pre-motion letters are complete, we write to request that the parties schedule the conference required by Rule 26(f) as soon as possible, but in any event no later than September 28, 2012. There is no conceivable reason to delay the conference. Judge Gardephe has ruled that discovery in the *Lagrange* and *DeSole* cases will move forward notwithstanding pending motions to dismiss, and we expect that he will do likewise in the *Howard* case. In the August 22 Court conference in *DeSole*, the Court stated that:

To state the obvious, this is a case that cries out for cooperation between counsel because of the overlap in cases and the potential for an enormous waste of time and money if witnesses that are addressed in topics in more than one case are repeatedly deposed.

Plaintiffs' counsel in the *DeSole* case has informed us that they plan to move forward with depositions, including third-party depositions, expeditiously. In furtherance of the

LYNN | CAHILL LLP


September 19, 2012

Page 2 of 2

cooperation that Judge Gardephe urged, we are willing to participate in those depositions to reduce overlap to the extent possible. However, such participation is impossible without, at a minimum, the parties' Rule 26 initial disclosures and the production to us of all documents already produced in the *Lagrange* and *DeSole* cases. We know that Knoedler and Ms. Freedman have already made such productions, and thus producing them to us should involve no more than burning a new CD. Similarly, we believe that Ms. Rosales and Mr. Andrade have already been subpoenaed and, we assume, produced or at least reviewed document. Mr. Andrade has already provided documents to Knoedler and Freedman in connection with the preliminary injunction hearing that he maintains, according to Ms. Freedman, in boxes at his home. We therefore formally request their production no later than no later than September 28, 2012. On our end, we are willing to make initial disclosures and produce documents quickly, as we said in our e-mail of *August 8* to counsel for the Knoedler defendants and Freedman and now reiterate to all counsel. Indeed, we are ready to provide initial disclosures by that date, and to produce documents within two weeks of service of document requests. Our requests for the production of documents already produced in the related cases, however, have to date been met with silence. Continued silence or a refusal to produce the referenced documents will be a clear sign that defense counsel is not interested in cooperation, notwithstanding the Court's stated wishes, and that there will be a further "waste of time and money."

Please respond to this letter no later than the close of business, September 21, 2012.  
Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ronald W. Adelman", with a long horizontal flourish extending to the right.

Ronald W. Adelman

# Exhibit F

1

Cc6nlesc Conference

1 UNITED STATES DISTRICT COURT

1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 DeSOLE ELEANORE et al.

4 Plaintiffs

5 v.

12 CV 2313 (PGG)

6 KNOEDLER GALLERY LLC, et al

7 Defendants

8 -----x

9 JOHN D. HOWARD,

10 Plaintiff,

11 v.

12 Civ. 5263 (PGG)

12 ANN FREEDMAN, et al.,,

13 Defendants.

14 -----x

15 New York, N.Y.

15 December 6, 2012

16 4:00 p.m.

17 Before:

18 HON. PAUL G. GARDEPHE

19 District Judge

20 SOUTHERN DISTRICT REPORTERS, P.C.

21 (212) 805-0300

22  
23  
24  
25

Cc6nlesc Conference

1 going to participate in depositions, he has an obligation to  
2 give me the documents so I can defend the depositions. That  
3 seems pretty straightforward to me.

4 THE COURT: You say defend depositions. These are  
5 Knoedler witnesses?

6 MR. SCHMERLER: They have noticed them. I assume we  
7 will have some questions. This is stuff that I have understood  
8 to be fairly straightforward over the years that I have  
9 practiced law.

10 You get document production and you do witnesses.  
11 Parties don't come and take depositions without having produced  
12 the documents. Your Honor made that statement at the last  
13 hearing. I don't know why we're going around with this.

14 THE COURT: We are dealing with a situation,  
15 Mr. Schmerler, where the representation has been made that you  
16 failed to produce documents that are sitting on a disk in your  
17 office right now that were produced in another case.

18 What is your explanation.

19 MR. SCHMERLER: It is irrelevant to this.

20 THE COURT: It is irrelevant. How could it possibly  
21 be irrelevant, all the documents in the Lagrange case, how  
22 could they possibly all be irrelevant to this case.

23 MR. SCHMERLER: No, it's not relevant to this  
24 discussion we are having now, your Honor. We are prepared to  
25 produce documents. I don't want to lead this down a silly

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300



Cc6nlesc Conference

1 path. The hour is late, and I understand the Court's view of  
2 this.

3 I don't want to start an argument about this. When it  
4 comes to specific depositions, my point is I need documents,  
5 they need documents, we need to get this done. I don't want to  
6 argue about this.

7 THE COURT: So why hasn't it happened? Why hasn't it  
8 happened?

9 Everyone here has represented they have been  
10 completely obstructed at every turn. So, as I have said, I am  
11 not going to spend every day between now and July 2013 trying  
12 to figure out who served which document requests first, who  
13 refused to respond to it first. It is just silliness.

14 At some point lawyers have to take responsibility for  
15 the case. They know their obligations. I set a deadline, and  
16 if you don't have any discovery, then we'll go to trial without  
17 any discovery.

18 I am not going to get into this level of detail with  
19 you. You know your responsibilities as lawyers. You have the  
20 deadline for discovery. You will either cooperate or you  
21 won't.

22 If you won't, I suppose there will be no discovery and  
23 we will go to trial without discovery. That's where we are.

24 You are going to have to figure it out.

25 MR. SCHMERLER: That is fully acceptable to us, your

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

# Exhibit G

LYNN | CAHILL LLP

jcahill@lynncahill.com

2012-December-18

BY E-MAIL

Charles D. Schmerler, Esq.  
Fulbright & Jaworski LLP  
666 Fifth Avenue, 31<sup>st</sup> Floor  
New York, New York 10103

Re: *Howard v. Freedman, et al.*, 12 CV 5263 (PGG)

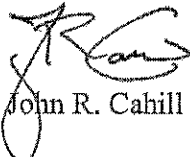
Dear Mr. Schmerler:

It is unclear to us what objections you have to the production of documents in light of your telephone call to us yesterday or even what the purpose of your call was. As we have made clear, at this time no expert report has been prepared with regard to the "de Kooning" at issue in this case. We reiterate that when expert discovery is appropriate, we will produce any reports that may be created in support of our claims. Whatever other plaintiffs have done, there is no requirement that a plaintiff have an expert report prepared in advance of filing a complaint and, indeed, that is not the usual course.

With regard to the fact discovery that Judge Gardephe has ordered to take place, we are prepared to provide documents that we have collected so far from Messrs. Howard and Frankfurt concerning the purchase of the "de Kooning" to you no later the end of the day tomorrow.

Your statement last night that we will "see nothing" from you absent the production of an expert report in is troubling on a number of grounds. We again reiterate our request for at least the documents already produced in the *Lagrange* and *De Sole* actions (and, by copy of this letter to Mr. Nikas make the same request of defendant Freedman), which we understand can be easily produced on a disk. Judge Gardephe made it clear to all parties that the Court expected document production to move forward expeditiously. We are prepared to do so and the defendants should do so as well.

Very truly yours,



John R. Cahill

Copy to: Luke Nikas, Esq. (by electronic mail)

# Exhibit H

# KNOEDLER & COMPANY

— ESTABLISHED 1848 —

19 EAST 70 STREET NEW YORK NEW YORK 10021

March 23, 2006

Jay H. Shidler, II  
The Shidler Group  
Davies Pacific Center  
841 Bishop Street, Suite 1700  
Honolulu, HI 96813

Dear Jay:

As promised, I am happy to enclose some background information on Motherwell's Elegy series. I believe the most thorough and important study on the Elegies was published in the 1978 exhibition catalogue *American Art at Mid-Century: The Subjects of the Artist*, National Gallery of Art, Washington, written by the then curator E. A. Carmean, Jr. There are many descriptive and informative passages in the essay including the following one:

*The final subject in each individual Elegy—its particular spirit, its separate meditation on life and death—is determined by the making of the picture out of its constituent parts. In this sense the Elegies (as a series) are fragmentary, although each is complete as a picture or as a speech. They correspond to our experience of the modern world, which we only partially know and not from a fixed point of view. "I learned that I can't say it all in one work," says the artist.*

Additionally, I am enclosing articles on Motherwell's general oeuvre, all three written by H.H. Arnason, author of the major monograph on Motherwell, first published in 1977. We were able to reprint these articles from past copies of *Art International*, archived in the Knoedler library.

I know you will soon be receiving your most beautiful and commanding Motherwell Elegy. I hope you will treasure it for years to come. I look forward to having the pleasure of seeing you when you are next in New York and in the meantime please let us know if we can be of any further assistance.

With all best,



Ann Freedman  
President

# Exhibit I

**FULBRIGHT**  
*& Jaworski L.L.P.*  
Attorneys at Law

---

Fulbright Tower • 1301 McKinney, Suite 5100 • Houston, Texas 77010-3095  
akontrimas@fulbright.com • Direct: 713 651 5482 • Main: 713 651 5151 • Facsimile: 713 651 5246

January 5, 2012

Mr. Howard A. Nagelberg  
Barack Ferrazzano Kirschbaum & Nagelberg LLP  
200 West Madison Street, Suite 3900  
Chicago, Illinois 60606.

Dear Mr. Nagelberg:

Thank you for your letter dated December 19, 2011 regarding two paintings by Krasner and Motherwell, respectively, held by your clients, Jay and Walette Shidler. I am taking this opportunity to respond to your letter on behalf of my clients, Knoedler Gallery, LLC and Michael A. Hammer. Please excuse the delay in responding to your letter but as you may know Knoedler has publicly announced its closing. Given that the business has existed for over 150 years, Knoedler is now in the laborious process of winding down and liquidating its art inventory in a deliberative manner. Consequently, neither it nor Mr. Hammer are in a position to open a dialogue with your clients regarding the purchase by Knoedler or Mr. Hammer of any paintings.

Very truly yours,

  
Andrius R. Kontrimas

ARK

# Exhibit J



BARACK FERRAZZANO KIRSCHBAUM & NAGELBERG LLP

200 WEST MADISON STREET, SUITE 3900  
CHICAGO, ILLINOIS 60606

Howard A. Nagelberg  
(312) 984-3198  
Voice Mail Ext. 4198  
howard.nagelberg@bfkn.com

Telephone (312) 984-3100  
Facsimile (312) 984-3150

December 19, 2011

**VIA UPS OVERNIGHT DELIVERY AND  
FIRST CLASS MAIL**

Michael A. Hammer, Chairman and Chief Executive Officer  
Armand Hammer Foundation  
9510 Jefferson Boulevard  
Culver City, CA 90232-2918

Re: Knoedler Gallery, LLC – Jay and Walette Shidler

Dear Mr. Hammer:

Our clients, Jay and Walette Shidler, of Honolulu, Hawaii, own two (2) pieces of fine art that they purchased from the Knoedler Gallery in New York City. One is a Motherwell, purchased for \$2.2M, and the other is a Krasner, purchased for \$1.0M. Based on media reports and recent court filings, it is our understanding that you are the sole principal of Knoedler.

Based on their substantial economic and emotional investment in the Knoedler pieces, our clients have been following with interest recent media reports questioning the authenticity of certain New York School abstract expressionist works sold by Knoedler, including those attributed to Motherwell and Krasner, as well as Jackson Pollock. They have also become aware of the litigation regarding those issues.

From the time of purchase until the recent reports, our clients steadfastly believed in and relied upon the authenticity of the pieces in question, and they continue to hope that each of them can stand up to any form of vetting. Unfortunately, under the cloud of uncertainty created by recent publicity, it is extremely difficult for them to continue to enjoy or adequately insure the pieces, or to pursue their disposition in a manner consistent with their eleemosynary intentions concerning their art collection, without submitting them to certain forensic vetting processes, which our clients would much prefer to avoid for a variety of reasons.


It appears to us, admittedly from a distance, that you continue to fervently believe that the works sold by Knoedler are authentic. For that reason, our clients would like to open a dialogue with you concerning the possibility of your repurchasing their Motherwell and Krasner pieces. Such a transaction would enable my clients to avoid the vetting of those pieces. While our clients would be willing, and would prefer, to execute such disposition discretely and on a confidential basis, they would be willing to consider a less private approach if that would somehow assist you in demonstrating your sincerity re the authenticity of the pieces sold by Knoedler.

BARACK FERRAZZANO KIRSCHBAUM & NAGELBERG LLP

Michael A. Hammer  
December 19, 2011  
Page 2

Please let us know whether the disposition referred to above is of any interest to you. If it is, we will put you in touch with our clients. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "H. Nagelberg", with a stylized flourish at the end.

Howard A. Nagelberg

HAN/lmg

# Exhibit K

Page 1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOHN D. HOWARD, individually and as  
assignee of Jaime Frankfurt, LLC,  
Plaintiff,

-against- 12-CV-5263  
(PGG)(HBP)

ANN FREEDMAN, GLAFIRA ROSALES,  
KNOEDLER GALLERY, LLC d/b/a  
KNOEDLER & COMPANY, MICHAEL HAMMER,  
8-31 HOLDINGS, INC., JOSE CARLOS  
BERGANTINOS DIAZ, and JAIME R.  
ANDRADE,

Defendants.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DOMENICO De SOLE and ELEANORE De SOLE,  
individually and as assignees of  
LAURA De SOLE,

Plaintiffs,  
-against- No. 12 Civ.  
2313(PGG)

KNOEDLER GALLERY, LLC d/b/a KNOEDLER &  
COMPANY, ANN FREEDMAN, GLAFIRA  
ROSALES, JOSE CARLOS BERGANTINOS DIAZ,  
MICHAEL HAMMER and JAIME ANDRADE,

Defendants.

April 29, 2013  
HOWARD SHAW

HUDSON REPORTING & VIDEO 1-800-310-1769

Page 3

# A P P E A R A N C E S :

LYNN & CAHILL LLP  
Attorneys for Plaintiffs  
58 West 40th Street  
New York, New York 10018  
By: PAUL COSSU, ESQ.

BOIES SCHILLER & FLEXNER LLP  
Attorneys for Defendant Ann Freedman  
10 North Pearl Street  
Fourth Floor  
Albany, New York 12207  
By: KYLE SMITH, ESQ.

FULBRIGHT & JAWORSKI LLP  
Attorneys for Defendants Knoedler  
Gallery, LLC, Michael Hammer and  
8-31 Holdings, Inc.  
666 Fifth Avenue  
New York, New York 10103-3198

By: MARK A. ROBERTSON, ESQ.

oOo

Page 2

1  
2 April 29, 2013  
3 9:43 a.m.  
4  
5 Deposition of HOWARD SHAW, taken by Plaintiffs,  
6 pursuant to Subpoena, held at the offices of  
7 Lynn & Cahill LLP, 58 West 40th Street, New  
8 York, New York, before Joseph R. Danyo, a  
9 Shorthand Reporter and Notary Public within  
10 and for the State of New York.  
11  
12  
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24  
25

Page 4

1 Shaw  
2 H O W A R D. S H A W, having been first duly  
3 sworn by Joseph R. Danyo, a Notary Public for the  
4 State of New York, was examined and testified as  
5 follows:  
6 EXAMINATION BY MR. COSSU:  
7 Q. Good morning, Mr. Shaw. My name is  
8 Paul Cossu. I represent John Howard in a case he  
9 has against Ann Freedman, Knoedler Gallery, 8-31  
10 Holdings, Jaime Andrade, Glafira Rosales and Jose  
11 Carlos Bergantinos Diaz.  
12 I am going to ask you some questions  
13 relating to that lawsuit today. Have you ever  
14 been deposed before?  
15 A. Yes.  
16 Q. So you may be familiar with this, but  
17 I will just give you a couple of quick ground  
18 rules to follow. Please wait until I finish a  
19 question before you begin to answer just so for  
20 the court reporter's sake, he can only take down  
21 one person at a time and we want to have a clear  
22 record for everyone.  
23 Feel free to ask for a break at any  
24 time. The only request I make is that if a  
25 question is pending, you answer the question

Page 41

1 Shaw  
2 Q. So the three meetings took place  
3 before the meeting where she was put on  
4 administrative leave?  
5 MR. ROBERTSON: Objection to form.  
6 Q. The three meetings took place before  
7 the meeting where Ann was told that she was being  
8 put on administrative leave?  
9 MR. ROBERTSON: Objection to form.  
10 A. I believe so.  
11 Q. Were there any subsequent meetings  
12 with Ms. Freedman? Did you have any subsequent  
13 meetings with Ms. Freedman?  
14 A. No.  
15 Q. Since receiving the FBI subpoena or  
16 since Knoedler received the FBI subpoena, have  
17 you had any discussions with anyone other than  
18 attorneys about Glafira Rosales?  
19 A. Yes.  
20 Q. Who have you had discussions with?  
21 A. What do you mean by discussion?  
22 Q. Has her name come up in conversation?  
23 A. Many people in the art world are  
24 curious about her and Knoedler, and so I am  
25 periodically asked about it, to which I reply I

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1 Shaw  
2 cannot discuss it.  
3 Q. Have you ever discussed Ms. Rosales  
4 in depth or in further depth with anyone?  
5 A. Not that I recall. If I did, it  
6 would have been about a newspaper article.  
7 Q. Have you discussed Glafira Rosales  
8 with Richard Lynch?  
9 A. Yes.  
10 Q. Outside the presence of attorneys?  
11 A. Yes.  
12 Q. And what did you discuss with him?  
13 A. He told me that Knoedler had received  
14 a painting or paintings from a woman which Ann  
15 was selling for significant profits.  
16 Q. When was this meeting or when was  
17 this discussion?  
18 A. I don't recall.  
19 Q. Was it before the FBI subpoena was  
20 received by Knoedler?  
21 A. Yes.  
22 Q. What did you say to Richard Lynch in  
23 response to what he told you?  
24 A. I said I was surprised that someone  
25 could make such large profits on a painting, or

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1 Shaw  
2 it may have been paintings, and I found it  
3 surprising and troubling.  
4 Q. Did Mr. Lynch give you an idea of the  
5 scale of the profits that Knoedler was receiving  
6 on these sales?  
7 MR. ROBERTSON: Objection to form.  
8 MR. SMITH: Objection.  
9 A. He said they were large profits.  
10 Q. What did you understand that to mean?  
11 A. That they were large profits.  
12 Q. Did Mr. Lynch express concern about  
13 the size of the profits?  
14 A. Not that I recall.  
15 Q. What did he say when you told him  
16 that you found it surprising and troubling?  
17 A. He said that the paintings were fresh  
18 to the market, but that Ann was working with her  
19 attorney to get them into the appropriate  
20 catalogue raisonné or obtain the appropriate  
21 certificate of authenticity.  
22 Q. Did you have any understanding as to  
23 which attorney Ms. Freedman was working with?  
24 A. I believe it was Ron Spencer.  
25 Q. Why did you find it troubling that

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1 Shaw  
2 Ms. Freedman was making such large profits from  
3 these sales?  
4 MR. ROBERTSON: Objection to form.  
5 MR. SMITH: Objection.  
6 A. Because in my business I find it  
7 difficult to make large profits.  
8 Q. Did you relay these concerns to  
9 anyone other than Richard Lynch?  
10 A. Not that I recall.  
11 Q. Did you ever discuss Ms.  
12 Freedman's -- the large profits Knoedler was  
13 receiving with Michael Hammer?  
14 MR. ROBERTSON: Outside of attorneys.  
15 A. Richard said that Michael was aware  
16 of them.  
17 Q. And you don't recall when this  
18 conversation took place?  
19 A. No.  
20 Q. But it took place before the FBI  
21 subpoena was received?  
22 A. Yes.  
23 Q. Did Richard say anything else to you  
24 about Mr. Hammer's understanding of these sales?  
25 A. No.

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1 Shaw  
 2 Q. Did Richard say anything else to you  
 3 about the sales besides the large profits that  
 4 Ann was receiving?  
 5 A. Not in addition to what I have  
 6 already told you.  
 7 Q. Did he mention Glafira Rosales at  
 8 all?  
 9 A. I don't recall.  
 10 Q. Did he mention the provenance of the  
 11 works?  
 12 A. Can you be more specific.  
 13 Q. You mentioned he said they were fresh  
 14 to the market. What did you understand that to  
 15 mean?  
 16 A. That they were new discoveries.  
 17 Q. Did he say anything about where they  
 18 came from, the works came from?  
 19 A. He said from a client of Ann's. He  
 20 may or may not have used her name.  
 21 Q. Did he give any indication as to  
 22 where the client obtained the works from?  
 23 A. Not that I recall.  
 24 Q. Did he express any concern about  
 25 where the works were coming from?

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1 Shaw  
 2 A. Some.  
 3 Q. What concern did he express?  
 4 A. Not so much concern, but that, though  
 5 the works were new discoveries, that Ann was  
 6 getting them into catalogue raisonnés or getting  
 7 certificates. He may have said she already had  
 8 received some.  
 9 Q. Did he make any statements as to the  
 10 size of the collection that Ann Freedman was  
 11 selling?  
 12 A. No.  
 13 Q. Did you inquire into how many works  
 14 Ann Freedman was receiving from this client?  
 15 A. No.  
 16 Q. Did you ever inquire into how many  
 17 works Ann had received from this client?  
 18 A. Yes.  
 19 Q. Outside of conversations with  
 20 attorneys?  
 21 A. No, with attorneys.  
 22 Q. And this was all after the FBI  
 23 subpoena was issued?  
 24 A. No.  
 25 MR. SMITH: Objection.

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1 Shaw  
 2 Q. You had discussions with attorneys  
 3 about the size of the collection before the FBI  
 4 subpoena was issued?  
 5 MR. ROBERTSON: Objection.  
 6 I'm not going to let you answer what  
 7 you talked about with attorneys.  
 8 MR. COSSU: Mark that for the record,  
 9 please. Just to be clear, that last  
 10 question was if he had discussions prior  
 11 to the FBI?  
 12 MR. ROBERTSON: No, your question was  
 13 did he have discussions about the size or  
 14 the number of paintings or something.  
 15 MR. COSSU: Correct. You are right.  
 16 Q. Did you have discussions with  
 17 attorneys prior to the FBI subpoena being issued?  
 18 A. Yes.  
 19 Q. Did Michael Hammer ever express to  
 20 you any concern that Knoedler might be selling  
 21 inauthentic works of art?  
 22 A. No.  
 23 Q. Did you ever express any concern to  
 24 Michael Hammer that Knoedler might be selling  
 25 inauthentic works of art?

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1 Shaw  
 2 A. Whatever discussions I may have had  
 3 on that topic would have been with our attorneys.  
 4 Q. To your knowledge, did Richard Lynch  
 5 ever have any discussions with Mr. Hammer  
 6 concerning the potential sale of inauthentic  
 7 works of art?  
 8 A. I don't know.  
 9 MR. COSSU: Let's mark as Plaintiffs'  
 10 Exhibit 221-A a document Bates stamped  
 11 KG 00011154 to 00011161.  
 12 (Plaintiffs' Exhibit 221-A, Document  
 13 bearing Bates numbers KG 00011154 to  
 14 00011161, was so marked for  
 15 identification, as of this date.)  
 16 Q. Can you tell me what this exhibit is?  
 17 A. It is four articles from The New York  
 18 Times.  
 19 Q. What is the subject matter of these  
 20 articles?  
 21 A. A group of paintings purported to be  
 22 by Jackson Pollock.  
 23 Q. Did you send these articles to Mr.  
 24 Hammer?  
 25 A. Yes.

# Exhibit L

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DOMENICO DE SOLE and	)	
ELEANORE DE SOLE,	)	
individually and as assignees	)	
of LAURA DE SOLE,	)	
Plaintiffs,	)	
-against-	)	12 civ. 2313 (PGG)
	)	
KNOEDLER GALLERY, LLC,	)	
d/b/a KNOEDLER & COMPANY,	)	
ANN FREEDMAN, GLAFIRA ROSALES,	)	
JOSE CARLOS BERGANTINOS DIAZ,	)	
MICHAEL HAMMER, and	)	
JAIME ANDRADE,	)	
Defendants.	)	
	)	
JOHN D. HOWARD individually	)	
and as an assignee of	)	
JAIME FRANKFURT, LLC,	)	
Plaintiff,	)	
-against-	)	12 civ. 5263 (PGG)
	)	
ANN FREEDMAN, GLAFIRA ROSALES,	)	
KNOEDLER GALLERY, LLC,	)	
d/b/a KNOEDLER & COMPANY,	)	
MICHAEL HAMMER, 8-31 HOLDINGS,	)	
INC., JOSE CARLOS BERGANTINOS	)	
DIAZ, and JAIME R. ANDRADE,	)	
Defendants.	)	
	)	

CONTINUED VIDEOTAPED DEPOSITION OF  
ANN FREEDMAN

New York, New York  
Monday, May 6, 2013  
2:12 p.m.

Reported by:  
Jennifer Ocampo-Guzman, CRR, CLR  
JOB NO. 30026



<p style="text-align: right;">575</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 May 6, 2013</p> <p>9 2:12 p.m.</p> <p>10</p> <p>11 Continued Videotaped Deposition</p> <p>12 of ANN FREEDMAN, held at the offices of</p> <p>13 Cahill Partners, 58 West 58th Street,</p> <p>14 New York, New York, pursuant to notice,</p> <p>15 before Jennifer Ocampo-Guzman, a Notary</p> <p>16 Public of the State of New York.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">577</p> <p>1</p> <p>2 APPEARANCES (Continued):</p> <p>3 Attorneys for Defendant Ann Freedman</p> <p>4 BOIES, SCHILLER &amp; FLEXNER, LLP</p> <p>5 575 Lexington Avenue, 7th Floor</p> <p>6 New York, New York 12207</p> <p>7 BY: NICHOLAS A. GRAVANTE, JR., ESQ.</p> <p>8 ngravante@bsflp.com</p> <p>9</p> <p>10</p> <p>11 Attorney for Defendant Glafira Rosales</p> <p>12 and Jose Carlos Bergantinos Diaz</p> <p>13 ANASTASIOS SARIKAS, ESQ.</p> <p>14 23-09 31st Street</p> <p>15 Astoria, New York 11105</p> <p>16 BY: ANASTASIOS SARIKAS, ESQ.</p> <p>17 tassos54@yahoo.com</p> <p>18</p> <p>19</p> <p>20 ALSO PRESENT:</p> <p>21 CARLOS KING, Videographer</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">576</p> <p>1</p> <p>2 A P P E A R A N C E S:</p> <p>3</p> <p>4 Attorneys for Plaintiff John Howard</p> <p>5 CAHILL PARTNERS, LLP</p> <p>6 58 West 40th Street, 2nd Floor</p> <p>7 New York, New York 10018</p> <p>8 BY: JOHN CAHILL, ESQ.</p> <p>9 jcahill@CahillLawFirm.com</p> <p>10 PAUL COSSU, ESQ.</p> <p>11 pcossu@CahillLawFirm.com</p> <p>12</p> <p>13 Attorneys for Plaintiffs Domenico De Sole</p> <p>14 and Eleanore De Sole</p> <p>15 CLARICK GUERON REISBAUM, LLP</p> <p>16 40 West 25th Street, 12th Floor</p> <p>17 New York, New York 10010</p> <p>18 BY: GREGORY A. CLARICK, ESQ.</p> <p>19 gclarick@cgr-law.com</p> <p>20 AARON CROWELL, ESQ.</p> <p>21 acrowell@cgr-law.com</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">578</p> <p>1</p> <p>2 THE VIDEOGRAPHER: This begins the</p> <p>3 video, the continued video deposition of</p> <p>4 Ann Freedman, in the matter of John D.</p> <p>5 Howard versus Ann Freedman, et al., and</p> <p>6 Domenico De Sole, et al., versus</p> <p>7 Knoedler Galleries LLC, et al., in the</p> <p>8 United States District Court, Southern</p> <p>9 District of New York.</p> <p>10 This deposition is being held at</p> <p>11 58 West 40th Street, New York, New York,</p> <p>12 on May 6, 2013, at approximately 2:12</p> <p>13 p.m.</p> <p>14 My name is Carlos King, from the</p> <p>15 firm of David Feldman Worldwide, and I</p> <p>16 am the legal video specialist. The</p> <p>17 court reporter is Jen Ocampo-Guzman, in</p> <p>18 association with David Feldman</p> <p>19 Worldwide.</p> <p>20 Will counsel please introduce</p> <p>21 themselves.</p> <p>22 MR. CLARICK: I'm Gregory Clarick</p> <p>23 from Clarick Gueron Reisbaum, here on</p> <p>24 behalf of Domenico De Sole. I'm also</p> <p>25 here with my colleague, Aaron Crowell,</p>

2 (Pages 575 to 578)

<p style="text-align: right;">611</p> <p>1 Freedman</p> <p>2 reporting to anyone the profit that Knoedler</p> <p>3 made on this sale?</p> <p>4 MR. GRAVANTE: Objection to the</p> <p>5 form.</p> <p>6 A. I recall this was internal</p> <p>7 information, and I don't recall my discussion</p> <p>8 about the sale with anybody outside of</p> <p>9 Knoedler.</p> <p>10 Q. How about within Knoedler?</p> <p>11 A. Though, as I sit here, I don't</p> <p>12 recall specific conversation, but there</p> <p>13 wasn't anyone within Knoedler that couldn't</p> <p>14 or wouldn't know what our internal financial</p> <p>15 information would be on any sale.</p> <p>16 Q. Well, did you discuss this sale</p> <p>17 with Pete Sansone?</p> <p>18 A. To my recollection, yes.</p> <p>19 Q. And what do you remember telling</p> <p>20 Mr. Sansone about this sale?</p> <p>21 A. It would be, as I can recall, that</p> <p>22 I made the sale, and here were the numbers.</p> <p>23 Q. Did you tell him it was a</p> <p>24 particularly profitable sale?</p> <p>25 MR. GRAVANTE: Objection to the</p>	<p style="text-align: right;">613</p> <p>1 Freedman</p> <p>2 sales for Knoedler, in connection with Mr.</p> <p>3 X's collection?</p> <p>4 A. I considered every sale of these</p> <p>5 works, which were of the highest quality,</p> <p>6 they were rare, important abstract</p> <p>7 expressionists' works; and any one of them I</p> <p>8 would have singularly discussed with Mr.</p> <p>9 Hammer.</p> <p>10 Q. I don't want to pick at your words,</p> <p>11 but just so the record is perfectly clear, is</p> <p>12 it your testimony that because these sales</p> <p>13 were important and significant to Knoedler,</p> <p>14 your recollection is that you discussed each</p> <p>15 of them with Mr. Hammer?</p> <p>16 A. My recollection, in general, is</p> <p>17 that I would, or I did inform Mr. Hammer.</p> <p>18 Q. Of each of these sales, from the</p> <p>19 works that were owned by Mr. X?</p> <p>20 A. My general recollection is that I</p> <p>21 informed him of each of these sales.</p> <p>22 MR. CLARICK: Could we take a break</p> <p>23 for a minute.</p> <p>24 THE VIDEOGRAPHER: Yes. The time</p> <p>25 is 2:59 p.m., and we're off the record.</p>
<p style="text-align: right;">612</p> <p>1 Freedman</p> <p>2 form.</p> <p>3 Q. Did he comment? What did he say</p> <p>4 back to you about the sale?</p> <p>5 A. I do not specifically recall.</p> <p>6 Q. Did you discuss this particular</p> <p>7 sale with Mr. Hammer?</p> <p>8 A. I do not recall a specific</p> <p>9 conversation, but I certainly may have; but</p> <p>10 he was knowledgeable about sales.</p> <p>11 Q. I note at the beginning of the</p> <p>12 deposition, Mr. Gravante made comments about</p> <p>13 the word "specific," and I guess with those</p> <p>14 in mind, I'm going to ask you, do you have a</p> <p>15 general recollection of a conversation with</p> <p>16 Mr. Hammer about this, about this particular</p> <p>17 sale?</p> <p>18 A. Generally, I told Mr. Hammer about</p> <p>19 sales that were, in my view, important and</p> <p>20 significant.</p> <p>21 Q. And was this an important and</p> <p>22 significant sale for Knoedler?</p> <p>23 A. Yes, it was.</p> <p>24 Q. Can you recall, as you're sitting</p> <p>25 here, any other important and significant</p>	<p style="text-align: right;">614</p> <p>1 Freedman</p> <p>2 (A brief recess was taken.)</p> <p>3 THE VIDEOGRAPHER: The time is</p> <p>4 3:12 p.m., and we're back on the record.</p> <p>5 EXAMINATION BY</p> <p>6 MR. SARIKAS:</p> <p>7 Q. Ms. Freedman --</p> <p>8 MR. CLARICK: Can you just make</p> <p>9 sure that it's clear -- I'm sure that it</p> <p>10 is -- that the next few questions are</p> <p>11 going to be asked by Mr. Sarikas, as</p> <p>12 counsel to Ms. Rosales.</p> <p>13 MR. SARIKAS: And Mr. Bergantinos,</p> <p>14 correct. And thank you very much.</p> <p>15 BY MR. SARIKAS:</p> <p>16 Q. Ms. Freedman, good afternoon to</p> <p>17 you. I have three questions to ask you. The</p> <p>18 first question is as follows: Did you ever</p> <p>19 meet Carlos Bergantinos?</p> <p>20 A. No, I never met Carlos Bergantinos.</p> <p>21 Q. When the De Soles bought the</p> <p>22 Rothko, is it correct to say that they bought</p> <p>23 a painting belonging to Knoedler?</p> <p>24 MR. CAHILL: Objection, form.</p> <p>25 MR. SARIKAS: Well, let me rephrase</p>

11 (Pages 611 to 614)